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# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0197; Directorate Identifier 2013–NE–09–AD; Amendment 39–17524; AD 2013–15–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Canada Corp. Turboprop Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Pratt & Whitney Canada Corp. (P&WC) PW118A, PW118B, PW119B, PW119C, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, PW127G, and PW127M turboprop engines. This AD was prompted by reports of fractures of the first-stage power turbine (PT) blade. This AD requires inspection of the first-stage PT blades and the removal from service of those blades that fail the inspection or their replacement with blades eligible for installation. We are issuing this AD to prevent fracture of the first-stage PT blade, possible engine fire, and damage to the airplane.

**DATES:** This AD becomes effective September 17, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 17, 2013.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: *www.pwc.ca.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the Mandatory Continuing Airworthiness Information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on April 5, 2013 (78 FR 20503). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been various reported incidents of P&WC PW100 series engine failures caused by the fracturing of the 1st Stage Power turbine (PT1) blade. Some of the above cases have resulted in engine fires. Further investigation by P&WC has traced the affected PT1 blade failures to undetected shrinkage porosity of unacceptable levels within the blade casting. Service experience indicates that the blades manufactured between 2005 and 2008 exhibit a higher propensity for unacceptable levels of shrinkage porosity.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (78 FR 20503, April 5, 2013) and the FAA's response to the comment.

### Request To Include Additional Engine Model

Empire Airlines, Inc. (EA) suggested that the PW121 model engine should be included in the proposed AD. EA reported that an ATR 42 airplane experienced what was believed to be an engine fire on the No. 1, PW121, engine. The engine was shut down and the aircraft landed safely. An engine teardown report revealed that the fracture of one low-pressure turbine (LPT) blade near the platform was by fatigue propagation from the trailing edge until final fracture by overload. The fatigue fracture most likely originated at the trailing edge tip from a casting anomaly that also resulted in the formation of numerous cracks. The reason for this request, although not specifically stated, is to add the PW121 model engine to the applicability of this AD.

We do not agree. The EA engine LPT blade failure incident was not due to the micro porosity issue which is the subject of this AD. The smaller PW121 engine stage 1 PT blades are under considerably less stress than the larger PW100 family of engines. Therefore, there is a lower probability of similar failures as seen on the larger PW100 engine series. We did not change the AD.

### Conclusion

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

### Costs of Compliance

We estimate that this AD affects about 540 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1.5 hours per engine to perform the inspection or replacement required by this AD. The average labor rate is $85 per hour. We estimate that 25% of the engines inspected would fail at least one first-stage PT blade. If the first-stage PT blade fails the inspection, a replacement blade would cost $6,000.

Based on these figures, we estimate the cost of the inspection or replacement to U.S. operators will be $878,850.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this 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.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2013–15–08 Pratt & Whitney Canada Corp.:** Amendment 39–17524; Docket No. FAA–2013–0197; Directorate Identifier 2013–NE–09–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective September 17, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Pratt & Whitney Canada Corp. (P&WC) PW118A, PW118B, PW119B, PW119C, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, PW127G, and PW127M turboprop engines with a first-stage power turbine (PT) blade, part number (P/N) 3120973–01, P/N 3120983–01, or P/N 3054053–01, installed, that has a serial number listed in Table 1 of the Appendix of P&WC Service Bulletin No. PW100–72–21823, Revision 3, dated March 8, 2013.

**(d) Reason**

This AD was prompted by reports of fractures of the first-stage PT blade. We are issuing this AD to prevent fracture of the first-stage PT blade, possible engine fire, and damage to the airplane.

**(e) Actions and Compliance**

Unless already done, within 60 months after the effective date of this AD or when the affected PT blades are at module level exposure, whichever occurs first, do one of the following:

(1) Replace the affected first-stage PT blade with a blade eligible for installation; or

(2) Perform a one-time X-ray inspection of the affected first-stage PT blades, using paragraph 3.F.(2) of the Accomplishment Instructions of P&WC Service Bulletin No. PW100–72–21823, Revision 3, dated March 8, 2013.

**(f) Installation Prohibition**

After the effective date of this AD, do not install into any engine any first-stage PT blade that has not passed the inspection required by paragraph (e)(2) of this AD.

**(g) Definition**

For the purpose of this AD, module level exposure is when the affected engine is inducted into the engine shop, the PT module is removed from the engine, and access is available to the necessary subassembly.

**(h) Credit for Previous Actions**

If before the effective date of this AD, you inspected the first-stage PT blades using P&WC Service Bulletin No. PW100–72–21823, Revision 2, dated November 15, 2012 or earlier versions, you met the inspection requirements in paragraph (e) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

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

**(j) Related Information**

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

(2) Refer to Transport Canada AD CF–2013–02, dated January 22, 2013, for more information. You may examine the AD on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0197-0003.*

(3) P&WC Service Bulletin No. PW100–72–21823, Revision 2, dated November 15, 2012, or earlier versions, which are not incorporated by reference in this AD, can be obtained from P&WC, using the contact information in paragraph (k)(3) of this AD.

**(k) Material Incorporated by Reference**

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

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

(i) Pratt & Whitney Canada Service Bulletin No. PW100–72–21823, Revision 3, dated March 8, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: *www.pwc.ca.*

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

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

Issued in Burlington, Massachusetts, on July 19, 2013.

**Colleen M. D'Alessandro,**

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

[FR Doc. 2013–19428 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0072; Directorate Identifier 2013–NE–04–AD; Amendment 39–17525; AD 2013–15–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Pratt & Whitney Division (PW) turbofan engine model PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 with a certain second-stage high-pressure turbine (HPT) air seal part number installed. This AD was prompted by discovery of cracks in second-stage HPT air seals. This AD requires inspection and removal from service of HPT air seals that fail inspection. We are issuing this AD to prevent failure of the second-stage HPT air seal, which could lead to an uncontained engine failure and damage to the airplane.

**DATES:** This AD is effective September 17, 2013. The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 17, 2013.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on March 18, 2013 (78 FR 16620). The NPRM proposed to require, for those air seals that meet certain cycles since new criteria, inspection and removal from service of HPT air seals that fail inspection.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 16620, March 18, 2013) and the FAA's response to each comment.

### Request To Provide Credit for Prior Compliance

All Nippon Airways Co., Ltd (ANA) and Japan Airlines (JAL) requested that credit be provided for inspections that were performed using prior versions of Alert Service Bulletin (ASB) No. PW4G–112–A72–330. The reason for this request is that the inspection procedure and inspection limits have not changed, so inspections using the prior version of the ASB should remain valid.

We agree. We added a Credit for Previous Actions paragraph as follows: ''You may take credit for eddy current inspections (ECIs) performed prior to the effective date of this AD using PW ASB No. PW4G–112–A72–330, dated December 3, 2012 or PW ASB No. PW4G–112–A72–330, Revision 1, dated February 26, 2013.''

### Request To Change Compliance Time

ANA, JAL, PW, and United Airlines (UAL) requested that the Compliance paragraph for the on-wing ECI be changed to remove the air seal from service within five cycles, instead of before further flight. The inspection will likely be performed on-wing and not at a major maintenance facility. Removal from service before further flight would lead to potential aircraft-on-ground situations. The change is also consistent with the PW ASB.

We agree. Removal from service within five cycles maintains an acceptable level of safety while allowing the operators some flexibility in removing the part from service. We changed the Compliance paragraph of this AD to fulfill this request.

### Request for Clarification of Terminating Action

ANA requested clarification on what the terminating action is. Although not specifically stated, the inferrence is that the commenter wants terminating action to be included in the AD.

We partially agree. We agree that the inspection program is an interim action. The terminating action to the repetitive inspections will be installation of a redesigned second-stage HPT air seal. We disagree with revising the AD to include terminating action at this time because the redesign is not yet available. We will take appropriate actions when the redesign is available. We did not change the AD.

### Request To Delay Issuance of AD

UAL requested that the AD be delayed for six months and that the comment period be re-opened. The reason for this request is that the majority of operators have not received training or have just received training on the inspection procedure and therefore are unable to provide substantive comments. Delaying the comment period will allow for more substantive comments to the NPRM (78 FR 16620, March 18, 2013).

We do not agree. The risk analysis does not support delaying the AD an additional six months. It is anticipated that all operators will receive training prior to the AD becoming effective. If changes to the inspection procedure are required, they can be handled through the Alternative Methods of Compliance paragraph of this AD. We did not change the AD.

### Request To Not Mandate Use of the Service Bulletin Incorporated By Reference (IBR)

UAL and PW requested that the AD not mandate the service bulletin IBR and include just the inspection criteria in the AD, or modify the mandated actions to only include the inspection criteria. The reason for this request is that the inspection procedure needs to be flexible and adaptable as unexpected inspection procedures are found. One commenter also identified several issues with the way the inspection procedure is currently worded, including use of a ''50 foot extension cord'' and a ''black Sharpie'' which, if included in the IBR, would force operators to use these specific items.

We partially agree. We agree that the the AD does not need to mandate the

entire inspection procedure, because not all aspects of the inspection procedure are unique. We disagree with not mandating the service bulletin at all, because aspects of the ECI are unique and would not necessarily be covered under general maintenance. If performed incorrectly, the inspection might not detect potential cracks. We revised this AD to only mandate the inspection itself, including how to disposition the ECI results.

**Request To Address Serviceability Limits**

UAL noted that ASB No. PW4G–112–A72–330, Revision 1, dated February 26, 2013, allows for some grinding of the T–2 nozzle guide vane (NGV), if needed, to gain access to the second-stage HPT airseal. There is also a procedure in the ASB to use an alternate access port if there is entrapped material preventing access to the primary port. The commenter requested that serviceability limits for both of these scenarios be included in the ASB. There was no justification provided for this request. It is inferred that the commenter is concerned that serviceability limits were not included.

We do not agree. Grinding of the T–2 NGV and using the alternate access port are not necessarily required to perform the inspection and are not mandated as part of this AD. We did not change the AD.

**Request To Include Reduced Inspection Interval**

UAL requested that we include a reduced inspection interval based on the results of the ECI, as described in PW ASB No. PW4G–112–A72–330. The change is requested because this interval is included in the ASB, but not included in the NPRM (78 FR 16620, March 18, 2013).

We agree. The reduced inspection interval was unintentionally omitted in the NPRM (78 FR 16620, March 18, 2013). We revised the AD as requested.

**Request To Change Compliance Time**

PW requested that the 1,000 cycle drawdown in paragraph (e)(2) of the NPRM (78 FR 16620, March 18, 2013) be effective December 2012, as opposed to after the effective date of the AD, to coincide with PW ASB No. PW4G–112–A72–330.

We do not agree. We cannot reference a date in the past, as requested, since operators must have the opportunity to comply with the AD. We did not change the AD.

**Conclusion**

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 16620, March 18, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 16620, March 18, 2013).

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

**Interim Action**

We consider this AD interim action. PW has not determined the root cause of the cracks discovered in second-stage HPT air seals.

**Costs of Compliance**

We estimate that this AD will affect 83 engines installed on airplanes of U.S. registry. We also estimate that it will take about 5 hours to perform the inspection required by this AD. The costs of an on-wing ECI or in-shop fluorescent-penetrant inspection (FPI) are assumed to be equal. The average labor rate is $85 per hour. Based on these figures, we estimate the total cost of the AD to U.S. operators will be $35,275.

**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**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–15–09 Pratt & Whitney Division:** Amendment 39–17525; Docket No. FAA–2013–0072; Directorate Identifier 2013–NE–04–AD.

**(a) Effective Date**

This AD is effective September 17, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Pratt & Whitney Division (PW) turbofan engine models PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 with second-stage high-pressure turbine (HPT) air seal, part number 54L041, installed.

**(d) Unsafe Condition**

This AD was prompted by discovery of cracks in second-stage HPT air seals. We are issuing this AD to prevent failure of the second-stage HPT air seal, which could lead to uncontained engine failure and damage to the airplane.

**(e) Compliance**

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

(1) For second-stage HPT air seals that have 1,200 or fewer cycles since new (CSN) on the effective date of this AD, perform an initial on-wing eddy current inspection (ECI) or initial in-shop fluorescent-penetrant inspection (FPI) for cracks within 2,200 CSN.

(2) For second-stage HPT air seals that have more than 1,200 CSN on the effective date of this AD, perform an initial on-wing ECI or initial in-shop FPI for cracks within 1,000 cycles after the effective date of this AD.

(3) Thereafter, repeat either the on-wing ECI or in-shop FPI every 1,200 cycles or fewer, since last inspection, depending on the results of the inspection.

(4) For the on-wing ECI, use section 4.0 of the Appendix of PW Alert Service Bulletin (ASB) No. PW4G–112–A72–330, Revision 2, dated July 11, 2013, to perform the inspection and use paragraph 8 of the Accomplishment Instructions of PW ASB No. PW4G–112–A72–330, Revision 2, dated July 11, 2013, to disposition the results of the inspection.

(5) For the in-shop FPI, remove the air seal from service if you find a crack.

**(f) Credit for Previous Actions**

You may take credit for ECIs performed prior to the effective date of this AD using PW ASB No. PW4G–112–A72–330, dated December 3, 2012 or PW ASB No. PW4G–112–A72–330, Revision 1, dated February 26, 2013.

**(g) Alternative Methods of Compliance (AMOCs)**

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

**(h) Related Information**

For more information about this AD, contact James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

**Material Incorporated by Reference**

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

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

(i) Pratt & Whitney Alert Service Bulletin No. PW4G–112–A72–330, Revision 2, dated July 11, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503.

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

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

Issued in Burlington, Massachusetts, on July 19, 2013.

**Colleen M. D'Alessandro,**

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

[FR Doc. 2013–19429 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0145; Directorate Identifier 2012–SW–059–AD; Amendment 39–17554; AD 2013–16–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Agusta S.p.A. and Bell Helicopter Textron Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB412 and AB412 EP, and Bell Helicopter Textron (Bell) Model 412, 412CF, and 412EP helicopters with certain DART Aerospace Ltd. (Dart) high gear aft crosstubes (crosstube) installed. This AD requires adding a life limit of 10,000 landings to the crosstube and removing from service any crosstubes with more than 10,000 accumulated landings. This AD is prompted by five separate reports of crosstube failures. The actions in this AD are intended to prevent failure of the crosstube and subsequent collapse of the landing gear.

**DATES:** This AD is effective September 17, 2013.

**ADDRESSES:** For service information identified in this AD, contact Dart Aerospace LTD., 1270 Aberdeen St, Hawkesbury, ON, K6A 1K7, Canada; telephone: 1 613 632 5200; Fax: 1 613 632 5246; or at *www.dartaero.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.

**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 AD, the foreign authority's AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Zimmer, Airframe Engineer, New York Aircraft Certification Office, Engine and Propeller Directorate, FAA, 1600 Stewart Ave., Suite 410, Westbury, New York 11590; telephone (516) 228–7306; email *jeffrey.zimmer@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On February 25, 2013, at 78 FR 12646, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Agusta Model AB412 and AB412 EP, and Bell Model 412, 412CF, and 412EP helicopters with certain Dart crosstubes installed. The NPRM proposed to require establishing a component history card for each crosstube, P/N D412–664–203; revising the airworthiness limitations of the maintenance manual to establish a life limit of 10,000 landings for each crosstube; and removing from service any crosstube with more than 10,000 landings. The proposed requirements were intended to prevent failure of the crosstube and subsequent collapse of the landing gear.

The NPRM was prompted by AD No. CF–2012–14R1, dated May 9, 2012, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada. TCCA issued AD No. CF–2012–14R1 to correct an unsafe condition for the Dart high gear aft crosstube assembly, part number (P/N) D412–664–203, approved under TCCA Supplemental Type Certificate (STC) SH01–9, FAA STC No. SR01298NY, and European Aviation Safety Agency STC IM.R.S.01304, and installed on Agusta Model AB412 and AB412 EP and Bell Model 412, 412EP, and 412CF helicopters. TCCA advises that they have received five reports of these crosstubes failing. According to TCCA, based on these reports, the affected crosstube requires a life limitation of 10,000 landings. As a result, TCCA issued AD No. CF–2012–14R1, which

requires amending the instructions for continued airworthiness (ICA) to establish the new life limitation, and removing from service all crosstubes with more than 10,000 landings.

**Comments**

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 12646, February 25, 2013).

**FAA's Determination**

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCCA, its technical representative, has notified us of the unsafe condition described in the TCCA AD. We are issuing this AD because we evaluated all information provided by TCCA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

**Related Service Information**

We reviewed Dart ICA No. ICA–D212–664, Revision 8, dated October 20, 2011, which contains the airworthiness limitations, inspection requirements, proper placards and markings, and maintenance procedures for crosstube P/N D212–664 and D412–664. Revision 8 establishes a life limit of 10,000 landings for crosstube P/N D412–664–203.

**Costs of Compliance**

We estimate that this AD will affect 76 helicopters of U.S. Registry. Based on an average labor cost of $85 per hour, we estimate that operators may incur the following costs in order to comply with this AD. Creating a component history card and amending the ICA requires about 1 work-hour, for a cost per helicopter of $85 and a total cost to U.S. operators of $6,460. Replacing a crosstube that has exceeded its life-limit requires about 6 work-hours and required parts will cost about $10,351, for a total cost per helicopter of $10,861.

**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 helicopters identified in this rulemaking action.

**Regulatory Findings**

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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 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.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–16–16 Agusta S.p.A. and Bell Helicopter Textron Helicopters:** Amendment 39–17554; Docket No. FAA–2013–0145; Directorate Identifier 2013–SW–059–AD.

**(a) Applicability**

This AD applies to Agusta S.p.A. Model AB412 and AB412 EP helicopters and Bell Helicopter Textron Model 412, 412CF, and 412EP helicopters with a DART Aerospace Ltd. high gear aft crosstube (crosstube), part-number (P/N) D412–664–203 installed under Supplemental Type Certificate (STC) No. SR01298NY, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as failure of a crosstube, which could result in collapse of the landing gear.

**(c) Effective Date**

This AD becomes effective September 17, 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 30 days:

(1) Create a component history card or equivalent record for each crosstube. Determine the number of landings on each crosstube and enter it on the component history card or equivalent record. If the number of landings is unknown, calculate 10 landings per flight hour.

(2) Revise the Airworthiness Limitations section of the maintenance manual to reflect that crosstube, P/N D412–664–203, has a retirement life of 10,000 landings.

(3) Remove from service any crosstube with a number of landings equal to or greater than 10,000.

**(f) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, New York Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Ave., Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531.

(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) Dart Instructions for Continued Airworthiness No. ICA–D212–664, Revision 8, dated October 20, 2011, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Dart Aerospace LTD., 1270 Aberdeen St, Hawkesbury, ON, K6A 1K7, Canada; telephone: 1 613 632 5200; Fax: 1 613 632 5246; or at *www.dartaero.com.* 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 Transport Canada Civil Aviation (TCCA) AD No. CF–2012–14R1, dated May 9, 2012. You may view a copy of the TCCA AD and a copy of STC No. SR01298NY in the AD Docket on the Internet at *http:/www.regulations.gov*.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 3213: Main Landing Gear Strut/Axle/Truck.

Issued in Fort Worth, Texas, on August 2, 2013.

**Lance T. Gant,**

*Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19434 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0566; Directorate Identifier 2011–SW–008–AD; Amendment 39–17065; AD 2012–11–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. The AD applies to certain Eurocopter Deutschland GmbH (Eurocopter) Model EC135 helicopters. The reference to Title 14, Code of Federal Regulations (14 CFR) 91.173 in the Required Actions section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

**DATES:** This final rule is effective August 13, 2013. The effective date for AD 2012–11–02 (77 FR 37790, June 25, 2012) remains July 10, 2012.

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

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; phone: (817) 222–5110; fax: (817) 222–5110; email: *sharon.y.miles@faa.gov*.

**SUPPLEMENTARY INFORMATION:** AD 2012–11–02, Amendment 39–17065 (77 FR 37790, June 25, 2012), applies to certain Eurocopter Model EC135 helicopters. AD 2012–11–02 currently requires, in part, visually checking the ring frame which connects the tail rotor Fenestron housing to the tailboom for a crack before further flight and thereafter at each preflight check, and allows this check to be performed by a pilot if certain regulatory recordkeeping requirements are met. As such, AD 2012–11–02 currently includes the following as the last sentence under paragraph (f)(1): ''The record must be maintained as required by 14 CFR 91.173, 121.380, or 134.439.''

As published, the reference to 14 CFR 91.173 is incorrect. The correct reference is to 14 CFR 91.417.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

### Correction of Regulatory Text

**§ 39.13 [Corrected]**

In the **Federal Register** of June 25, 2012, on page 37792, in the third column, the last sentence of paragraph (f)(1) is corrected to read as follows:

* * * * *

The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

* * * * *

Issued in Fort Worth, Texas, on August 2, 2013.

**Lance T. Gant,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19447 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–1297; Directorate Identifier 2012–SW–100–AD; Amendment 39–17285; AD 2012–25–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. The AD applies to certain Eurocopter France (Eurocopter) Model AS350B3 helicopters. The reference to Title 14, Code of Federal Regulations (14 CFR) 91.173 in the Required Actions section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

**DATES:** This final rule is effective August 13, 2013. The effective date for AD 2012–25–04 (78 FR 24041, April 24, 2013) remains May 9, 2013.

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

**FOR FURTHER INFORMATION CONTACT:** Robert Grant, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; phone: (817) 222–5110; fax: (817) 222–5110; email: *robert.grant@faa.gov.*

**SUPPLEMENTARY INFORMATION:** AD 2012–25–04, Amendment 39–17285 (78 FR 24041, April 24, 2013), applies to certain Eurocopter Model AS350B3 helicopters. AD 2012–25–04 currently requires, in part, before further flight and thereafter after each flight without exceeding 3 hours time-in-service between two checks, visually checking each laminated half bearing for certain conditions, and allows this check to be performed by a pilot if certain regulatory recordkeeping requirements

are met. As such, AD 2012–25–04 currently includes the following as the last sentence under paragraph (f)(4): ''The record must be maintained as required by 14 CFR 91.173, 121.380, or 134.439.''

As published, the reference to 14 CFR 91.173 is incorrect. The correct reference is to 14 CFR 91.417.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

**Correction of Regulatory Text**

**§ 39.13 [Corrected]**

In the **Federal Register** of April 24, 2013, on page 24046, in the second column, the last sentence of paragraph (f)(4) is corrected to read as follows:

* * * * *

The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

* * * * *

Issued in Fort Worth, Texas, on August 2, 2013.

**Lance T. Gant,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19444 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–1158; Directorate Identifier 2010–SW–018–AD; Amendment 39–16847; AD 2011–22–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register.** The AD applies to certain Eurocopter France (Eurocopter) Model AS350B, B1, B2, B3, BA, C, D, and D1 helicopters; and Model AS355E, F, F1, F2, N, and NP helicopters. The reference to Title 14, Code of Federal Regulations (14 CFR) 91.173 in the Compliance section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

**DATES:** This final rule is effective August 13, 2013. The effective date for AD 2011–22–05 (76 FR 70046, November 10, 2011) remains November 25, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Rotorcraft Directorate, Safety Management Group Manager, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; phone: (817) 222–5110; fax: (817) 222–5110; email: *jim.grigg@faa.gov.*

**SUPPLEMENTARY INFORMATION:** AD 2011–22–05, Amendment 39–16847 (76 FR 70046, November 10, 2011), applies to certain Eurocopter Model AS350B, B1, B2, B3, BA, C, D, and D1 and Model AS355E, F, F1, F2, N, and NP helicopters. AD 2011–22–05 currently requires, in part, a daily check of the tail rotor pitch control rod (control rod) outboard spherical bearing (bearing) for play, and allows this check to be performed by a pilot if certain regulatory recordkeeping requirements are met. As such, AD 2011–22–05 currently includes the following as the last sentence under paragraph (a): ''The record must be maintained as required by 14 CFR 91.173, 121.380, or 134.439.''

As published, the reference to 14 CFR 91.173 is incorrect. The correct reference is to 14 CFR 91.417.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register.**

**Correction of Regulatory Text**

**§ 39.13 [Corrected]**

In the **Federal Register** of November 10, 2011, on page 70048, in the third column, the last sentence of paragraph (a) is corrected to read as follows:

* * * * *

The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

* * * * *

Issued in Fort Worth, Texas, on August 2, 2013.

**Lance T. Gant,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19457 Filed 8–12–13; 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]**

## Modification of Class E Airspace; Brigham City, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Brigham City Airport, Brigham City, UT. 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 makes an adjustment to the geographic coordinates of the airport.

**DATES:** Effective date, 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**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:**

**History**

On June 5, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Brigham City, UT (78 FR 33772). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 designations listed in this document will be published subsequently in that Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Brigham City Airport, Brigham City, UT. The segment from the 4.3-mile radius of the airport extends 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 enhances the safety and management of aircraft operations. The geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Brigham City Airport, Brigham City, UT.

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, 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 August 2, 2013.

**Christopher Ramirez,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–19464 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. FDA–2011–C–0878]**

## Listing of Color Additives Exempt From Certification; Spirulina Extract

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of spirulina extract made from the dried biomass of the cyanobacteria *Arthrospira platensis* (*A. platensis*), as a color additive in candy and chewing gum. This action is in response to a petition filed by Mars, Inc.

**DATES:** This rule is effective September 13, 2013. See section X for related information on the filing of objections. Submit either electronic or written objections and requests for a hearing by September 12, 2013.

**ADDRESSES:** You may submit written or electronic objections and requests for a hearing, identified by Docket No. FDA–2011–C–0878, by any of the following methods:

**Electronic Submissions**

Submit electronic objections in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**Written Submissions**

Submit written objections in the following ways:

- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and Docket No. FDA–2011–C–0878 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Felicia M. Ellison, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1264.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

In a document published in the **Federal Register** of January 20, 2012 (77 FR 2935), we announced that Mars, Inc., c/o Keller and Heckman LLP, 1001 G Street NW., Suite 500 West, Washington, DC 20001, had filed a color additive petition (CAP 2C0293). The petition proposed to amend the color additive regulations in part 73 *Listing of Color Additives Exempt From Certification* (21 CFR part 73) to provide for the safe use of spirulina blue, an extract made from the biomass of *A. platensis,* as a color additive in candy and chewing gum. We are establishing spirulina extract as the common or usual name for this color additive instead of the proposed name spirulina blue because it more appropriately describes the additive.

## II. Identity, Manufacturing, and Specifications

The color additive that is the subject of this petition is a concentrated aqueous extract from the dried biomass of the cyanobacteria *A. platensis,* also called spirulina. Spirulina is a blue-green filamentous cyanobacteria that occurs naturally in freshwater and marine habitats. It has a long history as a food in many countries (Ref. 1). Spirulina contains chlorophyll and phycobilins, which absorb sunlight and have a role in photosynthesis. The phycobilins found in spirulina are phycocyanins, which are blue and, together with chlorophyll, give spirulina its characteristic blue-green color.

The petitioner describes the manufacture of spirulina extract using the species *A. platensis.* Spirulina extract consists primarily of the water soluble components of spirulina, namely phycocyanins and other proteins, polysaccharides, lipids, and minor amounts of components such as vitamins, minerals, and moisture. In general, spirulina extract is manufactured as follows: (1) The spirulina biomass is obtained from grown, harvested, rinsed, washed, and spray dried spirulina; (2) the spirulina biomass is soaked in water to extract the water-soluble proteins; (3) the aqueous extract is filtered and stabilized; and (4) the stabilized filtrate is the color additive spirulina extract. The spirulina extract manufactured by the petitioner contains not less than 10 percent phycocyanins. We have determined that because the amount of the color additive used in food is self-limiting, there is no need for a specific upper limit for the color additive or phycocyanin content (Ref. 2). Therefore, we are limiting the use of spirulina extract in candy and chewing gum to amounts consistent with good manufacturing practice. In addition to specification limits for lead, arsenic, and mercury, we are requiring that the color additive be negative for microcystin toxin, which is produced by some species of cyanobacteria that could be potentially present in the water where *A. platensis* is grown and harvested.

## III. Evaluation of Safety

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a particular use unless the data and information available to FDA establishes that the color additive is safe for that use. Our color additive regulations at 21 CFR 70.3(i) define safe to mean that there is ''convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.'' To establish with reasonable certainty that a color additive intended for use in food is not harmful under its intended conditions of use, we consider the projected human dietary exposure to the additive, the additive's toxicological data, and other relevant information (such as published literature) available to us. We compare an individual's estimated daily intake (EDI) of the additive from all food sources to an acceptable intake level established by toxicological data. The EDI is determined by projections based on the amount of the additive proposed for use in particular foods and on data regarding the amount consumed from all food sources of the additive. We commonly use the EDI for the 90th percentile consumer of a color additive as a measure of high chronic dietary intake.

## IV. Safety of Petitioned Use of the Additive

We have previously considered the safety of the dried biomass of spirulina and certain spirulina-derived substances in food as a result of submissions from firms who have made their own determinations that certain uses of spirulina and spirulina-derived substances in food are generally recognized as safe (GRAS). Under section 201(s) of the FD&C Act (21 U.S.C. 321(s)), a substance is GRAS if it is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food before January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. Under section 201(s) of the FD&C Act, a substance that is GRAS for a particular use in food is not a food additive, and may lawfully be utilized for that use without our review and approval. There is no GRAS exemption, however, to the definition of color additive in section 201(t) of the FD&C Act (21 U.S.C. 321(t)). Therefore, we must approve the use of a color additive in food before it is marketed; otherwise the food containing the color additive is adulterated under section 402(c) of the FD&C Act (21 U.S.C. 342(c)).

A firm may voluntarily submit information on a GRAS self-determination to us for review through our GRAS notification program (see 62 FR 18938 (April 17, 1997)). Through this program, we have received four GRAS notices (GRNs) for various uses of spirulina and spirulina-derived substances in food (GRNs 127, 394, 417, and 424).[1] We evaluated each of these GRNs and concluded that we had no reason to question the basis of the notifier's (a person who submits a GRAS notice) GRAS determinations (Refs. 3 to 6). In particular, the spirulina substance that was the subject of GRN 424 is similar in chemical composition to the subject color additive, with phycocyanin content ranging from 42 to 47 percent.

Importantly, in our response to these GRAS notifications, we indicated that if the substances that were the subject of these submissions impart color to the food, they may be subject to regulation as a color additive.

For the petitioned use of spirulina extract to color candy and chewing gum, we focused our review primarily on the safety of the phycocyanins because

[1] GRN 127 pertains to the use of the powdered dried biomass of *A. platensis* as an ingredient in specialty food bars, powdered nutritional drink mixes, popcorn, and as a condiment in salads, at levels ranging from 0.5 to 3.0 grams per serving. GRN 394 pertains to the use of the powdered dried biomass of *A. platensis* in certain fruit juices, low calorie fruit and vegetable juice drinks at a level up to 0.3 percent of the food, and in medical foods at a level up to 1.25 percent. GRN 417 pertains to the use of powdered dried biomass of *A. platensis* in nonalcoholic beverages and beverage bases, breakfast cereals, fruit juices, frozen dairy desserts and mixes, grain products and pastas, milk products, plant protein products, processed vegetables and vegetable juices, snack foods, soft candy, and soups and soup mixes, at levels ranging from 0.5 to 3.0 grams per serving. Lastly, GRN 424 pertains to the use of an aqueous extract of powdered *A. platensis* or *A. maxima* as an ingredient for use in all foods at levels consistent with good manufacturing practice, except for infant formula and those (e.g., meat, eggs and catfish) requiring additional review by the U.S. Department of Agriculture. FDA also is aware that spirulina-derived substances are used as dietary ingredients in dietary supplements.

these pigments are the main coloring components of the additive. As part of our safety evaluation, we estimated the exposure to phycocyanins from current and proposed food uses of spirulina-derived ingredients. We estimate that the petitioned use of spirulina extract in candy and chewing gum will result in an exposure to phycocyanins of 171 milligrams/person/day (mg/p/d) for the 90th percentile consumer 2 years of age or older. Because children typically consume more candy and chewing gum than the general population, we estimated the exposure to phycocyanins from the petitioned use of the subject color additive for children 2 to 5 and 6 to 12 years of age. For these population subgroups, we estimate the exposure at the 90th percentile to be 130 mg/p/d and 185 mg/p/d, respectively. For a cumulative exposure estimate, we used exposure information from GRN 424. The notifier for GRN 424 estimated a conservative exposure to phycocyanins from the notified uses of a spirulina extract to be 1140 mg/p/d. This exposure estimate does not include exposure to spirulina and phycocyanins from dietary supplement use due to the belief that their use is not widespread, and, therefore, would not significantly contribute to the dietary exposure of the wider population. (Ref. 7)

We have concluded that the exposure that was estimated for GRN 424 represents the upper bound cumulative exposure to phycocyanins from spirulina-based ingredients in food because of the high phycocyanin content of the substance that is the subject of GRN 424 (i.e., 42 to 47 percent) and its intended use in most foods (including candy and chewing gum). We conclude that this cumulative exposure estimate of 1140 mg/p/d for phycocyanins from current and proposed uses of spirulina-derived ingredients is sufficiently conservative (Ref. 7).

To support the safety of the petitioned use of the subject color additive in candy and chewing gum, the petitioner provided a number of published studies that investigated the toxicity of various spirulina powder extracts. The results of these studies showed no toxic effects at the doses that were tested. From these studies, we selected, as the pivotal safety study for this color additive, a chronic feeding study that tested spirulina powder in rats for 21 months at concentrations of 10, 20, or 30 percent of the diet (equal to 5,000, 10,000 or 15,000 milligrams per kilogram bodyweight per day (mg/kg bw/day). We determined that the results of this study showed no indications of adverse effects in rats with prolonged consumption of the spirulina powder at any of the doses tested. Therefore, we concluded that the no-observed-effect-level (NOEL) for spirulina based on the highest dose tested in this study is 15,000 mg/kg bw/d (900,000 mg/p/d for a 60 kilogram person). The phycocyanin content in the spirulina powders that were tested in this study were reported to be in the range of 12 to 20.5 percent and, based on this range, we have determined the NOEL for phycocyanins for humans to be between 108,000 to 184,500 mg/p/d. Taking into account the available safety information, the estimated intake of phycocyanins from the petitioned use of the spirulina extract, and the large margin of safety between the cumulative EDI and the NOEL, we conclude that the proposed use of spirulina extract to color candy and chewing gum is safe (Ref. 8).

We also evaluated the potential allergenicity of spirulina extract. We reviewed a comparison of the known amino acid sequences of phycocyanins with the sequences of known protein allergens and determined that there is a low probability that the phycocyanins are protein allergens. We conclude that spirulina phycocyanins present an insignificant allergy risk to consumers of the color additive.

Our conclusion regarding the safety of the petitioned use of the color additive is strengthened by the fact that the phycocyanobilin chromophore (the part of the molecule responsible for the coloring effect of the additive) is similar to certain bile pigments that are excreted from the liver via the gall bladder into the intestines. Based on a literature search and review, none of the bile pigments has been reported to produce any toxic effect, except in diseases caused by their presence in the blood due to inborn error of metabolism or other cause.

## V. Conclusion

Based on the data and information in the petition and other relevant material, we conclude that the petitioned use of spirulina extract, a color additive made from the biomass of *A. platensis,* in candy and chewing gum is safe. We further conclude that the additive will achieve its intended technical effect and is suitable for the petitioned use. Consequently, we are amending the color additive regulations in part 73. In addition, based upon the factors listed in 21 CFR 71.20(b), we conclude that certification of spirulina extract is not necessary for the protection of the public health.

## VI. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

## VII. Environmental Impact

We have previously considered the environmental effects of this rule as announced in the notice of filing for CAP 2C0293 (77 FR 2935). No new information or comments have been received that would affect our previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

## VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## IX. Section 301(ll) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act. This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the FD&C Act to, among other things, add section 301(*ll*) of the FD&C Act (21 U.S.C. 331(*ll*)). Section 301(*ll*) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(*ll*)(1) to (*ll*)(4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food products containing this color additive. Accordingly, this final rule should not be construed to be a statement that a product containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(*ll*) of the FD&C Act. Furthermore, this language is included in all color additive final rules that

pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(*ll*) of the FD&C Act applies.

## X. Objections

This rule is effective as shown in the **DATES** section of this document; except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

## XI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. M. A. B. Habib, M. Parvin, T. C. Huntington, and M. R. Hasan. 2008. ''A Review on Culture, Production and Use of Spirulina as Food for Humans and Feeds for Domestic Animals and Fish.'' *FAO Fisheries and Aquaculture Circular* No. 1034. Rome, FAO (*ftp://ftp.fao.org/docrep/fao/011/i0424e/i0424e00.pdf*).

2. Memorandum from N. Belai, Color Technology Team, OCAC, CFSAN, FDA to F. Ellison, Division of Petition Review, OFAS, CFSAN, FDA, December 12, 2012.

3. Letter from L. Tarantino, Office of Food Additive Safety, CFSAN, FDA to J. Dore, Cyanotech Corporation, Agency Response Letter GRAS Notice No. GRN 000127, October 6, 2003, (*http://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/ucm153944.htm*).

4. Letter from D. Keefe, Office of Food Additive Safety, CFSAN, FDA to S. Cho, Nutra Source, Agency Response Letter GRAS Notice No. GRN 000394, June 4, 2012, (*http://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/ucm313046.htm*).

5. Letter from D. Keefe, Office of Food Additive Safety, CFSAN, FDA to J. Endres, AIBMR Life Sciences, Inc., Agency Response Letter GRAS Notice No. GRN 000417, August 10, 2012, (*http://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/ucm319628.htm*).

6. Letter from D. Keefe, Office of Food Additive Safety, CFSAN, FDA to H. Newman, Desert Lake Technologies, LLC, Agency Response Letter GRAS Notice No. GRN 000424, December 6, 2012, (*http://www.fda.gov/Food/IngredientsPackagingLabeling/GRAS/NoticeInventory/ucm335743.htm*).

7. Memorandum from D. Folmer, Division of Petition Review, CFSAN, FDA to F. Ellison, Division of Petition Review, CFSAN, FDA, May 31, 2012.

8. Memorandum from G. Erives, Division of Petition Review, CFSAN, FDA to F. Ellison, Division of Petition Review, CFSAN, FDA, October 2, 2012.

## List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Add § 73.530 to subpart A to read as follows:

### § 73.530 Spirulina extract.

(a) *Identity.* (1) The color additive spirulina extract is prepared by the filtered aqueous extraction of the dried biomass of *Arthrospira platensis.* The color additive contains phycocyanins as the principal coloring components.

(2) Color additive mixtures for food use made with spirulina extract may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* Spirulina extract must conform to the following specifications and must be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Lead, not more than 2 milligrams per kilogram (mg/kg) (2 part per million (ppm));

(2) Arsenic, not more than 2 mg/kg (2 ppm);

(3) Mercury, not more than 1 mg/kg (1 ppm); and

(4) Negative for microcystin toxin.

(c) *Uses and restrictions.* Spirulina extract may be safely used for coloring candy and chewing gum at levels consistent with good manufacturing practice, except that it may not be used to color foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act, unless the use of the added color is authorized by such standards.

(d) *Labeling requirements.* The label of the color additive and of any mixture prepared therefrom intended solely or in part for coloring purposes must conform to § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act.

Dated: August 6, 2013.

**Susan M. Bernard,**

*Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.*

[FR Doc. 2013–19550 Filed 8–12–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 11

**[BIA–2013–0001; 134/A0J351010.999900/AAKL008000]**

**RIN 1076–AF16**

## Courts of Indian Offenses

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is confirming the interim final rule published and effective on March 3, 2013, addressing the addition of two Indian tribes to the list of tribes with Courts of Indian Offenses (also known as CFR Courts), and deletion of five tribes from those under the jurisdiction of CFR Courts. The March 3, 2013, publication stated that the BIA would review comments on the interim final rule and either confirm the rule or initiate a proposed rulemaking. BIA did not receive any comments, and therefore confirms the rule without change.

**DATES:** Effective August 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Acting Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

**SUPPLEMENTARY INFORMATION:** This rule revises a section of 25 CFR part 11 to add the following Indian tribes to the list of tribes with established Courts of Indian Offenses (also known as CFR Courts): The Seneca-Cayuga Tribe and the Skull Valley Band of Goshute Indians. Adding these tribes will allow for the administration of justice until the added tribes put into effect a law-and-order code that establishes a court system that meets regulatory requirements or until the tribe adopts a legal code and establishes a judicial system in accordance with its constitution and bylaws or other governing documents.

The rule also revises a section of 25 CFR 11.100(c) to remove five tribes from the list of those with established CFR Courts. The tribes removed from the list are the Seminole Nation, the Miami Tribe, the Wyandotte Tribe, the Choctaw Nation of Oklahoma, and the Quapaw Tribe of Indians.

On March 3, 2013, we published an interim final rule with a request for comment at 78 FR 14017. We stated in the interim final rule that we would review any comments received and, by a future publication, address any comments received and either confirm the interim final rule with or without change or initiate a proposed rulemaking. We received no comments on the interim final rule.

Therefore, the interim rule published March 3, 2013, at 78 FR 14017, is confirmed as final without change.

Dated: August 1, 2013.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2013–19596 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0103]**

### Safety Zone; Luna Pier Fireworks, Luna Pier, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Luna Pier Fireworks Show, Luna Pier, MI, from 9:25 p.m. until 10:25 p.m. on August 24, 2013. Enforcement of this zone is necessary to ensure the safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the associated marine event. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels on those waters of Lake Erie within a 300-yard radius of the fireworks launch site at the Clyde E. Evens Municipal Pier, located at position 41°48′32″ N, 83°26′23″ W (NAD 83) immediately prior to, during, and immediately after the fireworks event.

**DATES:** The regulation in 33 CFR 165.941(a)(16) will be enforced from 9:25 p.m. until 10:25 p.m. on August 24, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email MST1 Ian Fallon, Response Department, Marine Safety Unit Toledo, 420 Madison Ave., Suite 700, Toledo, OH 43604; telephone (419) 418–6036, email *Ian.M.Fallon@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone listed in 33 CFR 165.941(a)(16) Luna Pier Fireworks Show, Luna Pier, MI from 9:25 p.m. to 10:35 p.m. on August 24, 2013.

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within this safety zone during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zone may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is being enforced.

This notice is issued under authority of 33 CFR 165.941(a)(16) and 5 U.S.C. 552(a). If the Captain of the Port determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: July 29, 2013.

**J. E. Ogden,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2013–19506 Filed 8–12–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 65

**[Docket ID FEMA–2013–0002]**

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations

listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Connecticut: Hartford (FEMA Docket No.: B–1209). | City of Hartford (10–01–1797P). | February 16, 2011; February 23, 2011; *The Hartford Courant*. | The Honorable Pedro E. Segarra, Mayor, City of Hartford, 550 Main Street, 2nd Floor, Room 200, Hartford, CT 06103. | June 23, 2011 | 095080 |
| Illinois: | | | | | |
| Adams (FEMA Docket No.: B–1209). | City of Quincy (11–05–0757P). | February 7, 2011; February 14, 2011; *The Quincy Herald-Whig*. | The Honorable John A. Spring, Mayor, City of Quincy, City Hall, 730 Maine Street, Quincy, IL 62301. | June 15, 2011 | 170003 |
| Adams (FEMA Docket No.: B–1209). | Unincorporated areas of Adams County (11–05–0757P). | February 7, 2011; February 14, 2011; *The Quincy Herald-Whig*. | The Honorable Mike Mclaughlin, Chairman, Adams County Board, Adams County Courthouse, 507 Vermont Street, Quincy, IL 62301. | June 15, 2011 | 170001 |
| Kansas: Rice (FEMA Docket No.: B–1209). | City of Sterling (11–07–0838P). | April 14, 2011; April 21, 2011; *The Sterling Kansas Bulletin*. | The Honorable Todd Rowland, Mayor, City of Sterling, 114 North Broadway, P.O. Box 287, Sterling, KS 67579. | August 19, 2011 | 200297 |
| Massachusetts: Essex (FEMA Docket No.: B–1209). | City of Salem (10–01–0551P). | February 10, 2011; February 17, 2011; *The Salem Evening News*. | The Honorable Kimberley Driscoll, Mayor, City of Salem, City Hall, 93 Washington Street, Salem, MA 01970. | January 26, 2011 | 250102 |
| Missouri: | | | | | |
| Greene (FEMA Docket No.: B–1209). | City of Springfield (10–07–2268P). | April 7, 2011; April 14, 2011; *The Springfield News Leader*. | The Honorable James O'Neal, Mayor, City of Springfield, P.O. Box 8368, 840 Boonville Avenue, Springfield, MO 65801. | August 12, 2011 | 290149 |
| Cass (FEMA Docket No.:, B–1209). | City of Harrisonville (10–07–2115P). | April 15, 2011; April 22, 2011; *The Cass County Democrat Missourian*. | The Honorable Kevin Wood, Mayor, City of Harrisonville, 300 East Pearl Street, P.O. Box 367, Harrisonville, MO 64701. | August 22, 2011 | 290068 |
| Nebraska: Lancaster (FEMA Docket No.: B–1209). | City of Lincoln (11–07–1426P). | April 14, 2011; April 21, 2011; *The Lincoln Journal Star*. | The Honorable Chris Beutler, Mayor, City of Lincoln, 555 South 10th Street, Suite 301, Lincoln, NE 68508. | March 30, 2011 | 315273 |
| Ohio: | | | | | |
| Franklin (FEMA Docket No.: B–1209). | Unincorporated areas of Franklin County (11–05–3271P). | May 16, 2011; May 23, 2011; *The Daily Reporter*. | Ms. Marilyn Brown, President, Franklin County, 373 South High Street, 26th Floor, Columbus, OH 43215. | May 2, 2011 | 390167 |
| Franklin (FEMA Docket No.: B–1209). | City of Columbus (11–05–3271P). | May 16, 2011; May 23, 2011; *The Daily Reporter*. | The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Board Street, City Hall, 2nd Floor, Columbus, OH 43215. | May 2, 2011 | 390170 |

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Montgomery (FEMA Docket No.: B–1209). | City of Kettering (10–05–4843P). | February 10, 2011; February 17, 2011; *The Dayton Daily News*. | The Honorable Don Patterson, Mayor, City of Kettering, 3600 Shroyer Road, Kettering, OH 45429. | June 17, 2011 | 390412 |
| Butler (FEMA Docket No.: B–1209). | City of Monroe (11–05–2538P). | March 10, 2011; March 17, 2011; *The Middleton Journal*. | The Honorable Robert E. Routson, Mayor, City of Monroe, 233 South Main Street, P.O. Box 330, Monroe, OH 45050. | March 1, 2011 | 390042 |
| Warren (FEMA Docket No.: B–1209). | Unincorporated areas of Warren County (11–05–2538P). | March 10, 2011; March 17, 2011; *The Middleton Journal*. | Mr. David G. Young, Warren County Commissioner, 1st Floor, 406 Justice Drive, Lebanon, OH 45036. | March 1, 2011 | 390757 |
| Washington: | | | | | |
| Pierce (FEMA Docket No.: B–1209). | City of Sumner (10–10–0620P). | April 11, 2011; April 18, 2011; *The News Tribune*. | The Honorable Dave Enslow, Mayor, City of Sumner, Sumner City Hall, 1104 Maple Street, Sumner, WA 98390. | August 16, 2011 | 530147 |
| King (FEMA Docket No.: B–1209). | Unincorporated areas of King County (10–10–0977P). | May 5, 2011; May 12, 2011; *The Seattle Times*. | Mr. Dow Constantine, King County Executive, 401 5th Avenue, Suite 800, Seattle, WA 98104. | April 25, 2011 | 530071 |
| King (FEMA Docket No.: B–1209). | City of Burien (10–10–0977P). | May 5, 2011; May 12, 2011; *The Seattle Times*. | The Honorable Joan McGilton, Mayor, City of Burien, 400 Southwest 152nd Street, Suite 300, Burien, WA 98166. | April 25, 2011 | 530321 |
| Wisconsin: | | | | | |
| Dane (FEMA Docket No.: B–1209). | Unincorporated areas of Dane County (10–05–5471P). | March 3, 2011; March 10, 2011; *The News Sickle Arrow*. | Ms. Kathleen Falk, Dane County Executive, County Building, Room 421, 210 Martin Luther King Jr. Boulevard, Madison, WI 53703. | July 8, 2011 | 550077 |
| Dane (FEMA Docket No.: B–1209). | Village of Cross Plains (10–05–5471P). | March 3, 2011; March 10, 2011; *The News Sickle Arrow*. | Mr. Mike Schutz, President, Village of Cross Plains, 2417 Brewery Road, Cross Plains, WI 53528. | July 8, 2011 | 550081 |
| Brown (FEMA Docket No.: B–1209). | Village of Pulaski (10–05–6098P). | February 24, 2011; March 3, 2011; *The Greenbay Press Gazette*. | Mr. Keith Chambers, Village President, 421 South Saint Augustine Street, Pulaski, WI 54162. | July 5, 2011 | 550024 |
| Brown (FEMA Docket No.: B–1209). | Unincorporated areas of Brown County (10–05–6098P). | February 24, 2011; March 3, 2011; *The Greenbay Press Gazette*. | The Honorable Guy Zima, Chairman, Brown County Board, 305 East Walnut Street, Green Bay, WI 54301. | July 5, 2011 | 550020 |
| Fond du Lac (FEMA Docket No.: B–1209). | Village of Rosendale (10–05–4703P). | May 16, 2011; May 23, 2011; *The Reporter*. | Mr. James Westphal, President, Village of Rosendale, 221 North Grant Street, Rosendale, WI 54974. | September 20, 2011 | 550141 |
| Fond du Lac (FEMA Docket No.: B–1209). | Unincorporated areas of Fond du Lac County (10–05–4703P). | May 16, 2011; May 23, 2011; *The Reporter*. | Mr. Allen J. Buechel, Fond du Lac County Executive, 160 South Macy Street, Fond du Lac, WI 54935. | September 20, 2011 | 550131 |
| Sauk (FEMA Docket No.: B–1209). | Village of Lake Delton (10–05–6994P). | March 30, 2011; April 6, 2011; *The Wisconsin Dells Event*. | Mr. John Webb, President, Village of Lake Dalton, 50 Wisconsin Dells Parkway South, Post Office Box 87, Lake Delton, WI 53940. | August 4, 2011 | 550394 |
| Milwaukee (FEMA Docket No.: B–1209). | City of Greenfield (11–05–1089P). | April 14, 2011; April 21, 2011; *The Greenfield Now*. | The Honorable Michael J. Neitzke, Mayor, City of Greenfield, 7325 West Forest Home Avenue, Greenfield, WI 53220. | March 31, 2011 | 550277 |
| Illinois: | | | | | |
| Will (FEMA Docket No.: B–1211). | Unincorporated areas of Will County (11–05–1594X). | June 23, 2011; June 30, 2011; *The Mokena Messenger*. | Mr. Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432. | October 28, 2011 | 170695 |
| Will (FEMA Docket No.: B–1211). | Village of Mokena (11–05–1594X). | June 23, 2011; June 30, 2011; *The Mokena Messenger*. | The Honorable Joseph W. Werner, Mayor, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448. | October 28, 2011 | 170705 |
| Kansas: | | | | | |
| Johnson (FEMA Docket No.: B–1211). | City of Lenexa (11–07–1137P). | June 1, 2011; June 8, 2011; *The Shawnee Dispatch*. | The Honorable Michael Boehm, Mayor, City of Lenexa, P.O. Box 14888, Lenexa, KS 66285. | October 06, 2011 | 200168 |
| Johnson (FEMA Docket No.: B–1211). | City of Shawnee (11–07–1137P). | June 1, 2011; June 8, 2011; *The Shawnee Dispatch*. | The Honorable Jeff Meyers, Mayor, City of Shawnee, 11110 Johnson Drive, Shawnee, KS 66203. | October 06, 2011 | 200177 |
| Michigan: | | | | | |
| Macomb (FEMA Docket No.: B–1211). | City of St. Clair Shores (11–05–5445P). | July 6, 2011; July 13, 2011; *The St. Clair Shores Sentinel*. | The Honorable Robert A. Hison, Mayor, City of St. Clair Shores, 27600 Jefferson Circle Drive, St. Clair Shores, MI 48081. | June 22, 2011 | 260127 |
| Shiawassee (FEMA Docket No.: B–1211). | Charter Township of Owosso (11–05–0616P). | June 3, 2011; June 10, 2011; *The Argus Press*. | Mr. Danny C. Miller, Supervisor, Owosso Charter Township, 2998 West M–21, P.O. Box 400, Owosso, MI 48867. | October 11, 2011 | 260809 |
| Shiawassee (FEMA Docket No.: B–1211). | City of Owosso (11–05–0616P). | June 3, 2011; June 10, 2011; *The Argus Press*. | The Honorable Benjamin Frederick, Mayor, City of Owosso, 301 West Main Street, Owosso, MI 48867. | October 11, 2011 | 260596 |

| State and county | Location and case No. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Ohio: | | | | | |
| Clinton (FEMA Docket No.: B–1211). | Unincorporated areas of Clinton County (10–05–7060P). | June 2, 2011; June 9, 2011; *The Wilmington News Journal*. | Mr. Randy Riley, Clinton County Commissioners Board Member, 46 South Street, 2nd Floor Courthouse, Wilmington, OH 45177. | October 07, 2011 ..... | 390764 |
| Clinton (FEMA Docket No.: B–1211). | Village of Sabina (10–05–7060P). | June 2, 2011; June 9, 2011; *The Wilmington News Journal*. | The Honorable Dean Carnahan, Mayor, Village of Sabina, 99 North Howard Street, Sabina, OH 45169. | October 07, 2011 ..... | 390627 |
| Lake (FEMA Docket No.: B–1211). | Unincorporated areas of Lake County (10–05–5769P). | June 14, 2011; June 21, 2011; *The News Herald*. | Mr. Raymond E. Sines, President, Lake County Board of Commissioners, 105 Main Street, Painesville, OH 44077. | July 01, 2011 ..... | 390771 |
| Oregon: | | | | | |
| Linn (FEMA Docket No.: B–1211). | City of Millersburg (11–10–0824P). | June 6, 2011; June 13, 2011; *The Democrat Herald*. | The Honorable Clayton Wood, Mayor, City of Millersburg, 4222 Northeast Old Salem Road, Albany, OR 97321. | October 12, 2011 ..... | 410284 |
| Wisconsin: | | | | | |
| Brown (FEMA Docket No.: B–1211). | Unincorporated areas of Brown County (11–05–4502P). | June 28, 2011; July 5, 2011; *The Green Bay Press Gazette*. | The Honorable Guy Zima, Chairman, Brown County Board, 305 East Walnut Street, Green Bay, WI 54301. | November 02, 2011 ..... | 550020 |
| Portage (FEMA Docket No.: B–1211). | City of Stevens Point (10–05–7569P). | July 15, 2011; July 22, 2011; *The Portage County Gazette*. | The Honorable Andrew Halverson, Mayor, City of Stevens Point, 1515 Strongs Avenue, Steven Point, WI 54481. | October 31, 2011 ..... | 550342 |
| Iowa: Linn (FEMA Docket No.: B–1219). | City of Marion (11–07–1284P). | August 11, 2011; August 18, 2011; *The Marion Times*. | The Honorable Paul Rehn, Mayor, City of Marion, 2710 25th Avenue, Marion, IA 52302. | December 16, 2011 ..... | 190191 |
| Idaho: Teton (FEMA Docket No.: B–1219). | Unincorporated areas of Teton County (11–10–0678P). | August 11, 2011; August 18, 2011; *The Teton Valley News*. | The Honorable Kathryn Rinaldi, Chairman, Teton County Board of Commissioners, Teton County Courthouse, 150 Courthouse Drive, Driggs, ID 83422. | September 1, 2011 ..... | 160230 |
| Ohio: | | | | | |
| Lake (FEMA Docket No.: B–1219). | Unincorporated areas of Lake County (11–05–2150P). | August 11, 2011; August 18, 2011; *The News-Herald*. | Mr. Raymond E. Sines, President, Lake County Ohio Board, 105 Main Street, Painesville, OH 44077. | December 16, 2011 ..... | 390771 |
| Warren (FEMA Docket No.: B–1219). | City of Mason (11–05–2541P). | August 11, 2011; August 18, 2011; *The Pulse Journal*. | The Honorable Don Prince, Mayor, City of Mason, 6000 Mason Montgomery Road, Mason, OH 45040. | December 16, 2011 ..... | 390559 |
| Warren (FEMA Docket No.: B–1219). | Unincorporated areas of Warren County (11–05–2541P). | August 11, 2011; August 18, 2011; *The Pulse Journal*. | Mr. David G. Young, Warren County Commissioner, First Floor, 406 Justice Drive, Lebanon, OH 45036. | December 16, 2011 ..... | 390757 |
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| Johnson (FEMA Docket No.: B–1234). | City of Fairway (11–07–1190P). | October 4, 2011; October 11, 2011; *The Legal Record*. | The Honorable Jerry Wiley, Mayor, City of Fairway, 4210 Shawnee Mission Parkway, Suite 100, Fairway, KS 66205. | February 8, 2012 ..... | 205185 |
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| Washington: King County (FEMA Docket No.: B–1248). | City of Burien (11–10–0033P). | October 28, 2011; November 4, 2011; *The Highline Times*. | The Honorable Joan McGilton, Mayor, City of Burien, 400 Southwest 152nd Street, Suite 300, Burien, WA 98166. | November 4, 2011 ..... | 530321 |
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(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Date: July 26, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 1, and 43

**[WC Docket No. 11–10; FCC 13–87]**

## Modernizing the FCC Form 477 Data Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Report and Order revises the Federal Communications Commission's Form 477 collection to include data on deployment of fixed and mobile broadband networks and mobile voice networks, as well as company identification and emergency contact information. The Report and Order also makes a number of targeted changes to the collection of subscription data to reduce reporting burdens and improve the quality and usefulness of data collected through the Form 477.

**DATES:** Effective September 12, 2013 except for the amendments to §§ 1.7001, 1.7002, 43.01 and 43.11 of the Commission's rules, which contain information collection requirements that have not been approved by the Office of Management and Budget and will become effective upon announcement in the **Federal Register** of Office of Management and Budget approval and an effective date of the rules.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Fallon, Industry Analysis and Technology Division, Wireline Competition Bureau, at (202) 418–0940.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in WC Docket No. 11–10, FCC 13–87, released on June 27, 2013. The complete text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov*.

### Congressional Review Act

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

### Synopsis of Report and Order

### I. Introduction

1. The Commission is committed to robust, data-driven decision making. Data about broadband and voice deployment and subscription are essential to the Commission's ability to fulfill its statutory obligations and play a vital public interest role for other state, local, and federal agencies, researchers, and consumers. To carry out our commitment, we need adequate and reliable data.

2. For the last three years, data on broadband deployment have been collected by the National Telecommunications and Information Administration (NTIA) to populate the National Broadband Map. But NTIA's collection program is nearing its completion. In today's Order, we assume the responsibility for collection of broadband deployment data, with some modifications to streamline and reduce the burdens on providers while making other modest improvements. We applaud NTIA for its collection in coordination with the states through the State Broadband Initiative (SBI). We are proud to carry the torch forward.

3. In addition, this Order makes a number of targeted changes to reduce reporting burdens and enhance the usefulness of data collected through the Form 477. Specifically, we modify our Form 477 program in the following ways. To ensure continuity with the National Broadband Map, we collect network deployment data for fixed and mobile broadband as well as mobile voice network deployment data. Fixed broadband data will be collected by census block, while mobile broadband and mobile voice providers will provide data showing their network coverage areas. To streamline and reduce burdens, we will not require providers to submit broadband deployment data in predetermined speed tiers, and instead will require providers of broadband services simply to provide advertised speeds—the maximum advertised speed in each census block for fixed broadband, and the minimum advertised speed in each coverage area for mobile broadband. Streamlining the collection in this manner will give the Commission greater flexibility to group and analyze broadband speed data in useful ways. We also allow providers to file all data in a single, uniform format, rather than potentially different formats across the states. To analyze competition for residential versus business customers, fixed broadband providers must distinguish, where appropriate, between deployment of residential and nonresidential services.

4. With regard to our collection of subscription and other data, we also take measures to reduce burdens while improving the quality of our data: To reduce burdens we: eliminate the use of speed tiers for broadband subscription data, as we do with broadband deployment data, and require filers to provide the number of broadband connections by the advertised speeds associated with each product subscribed to in the relevant geographic area, census tracts for fixed and states for mobile. Fixed providers will report connections by the maximum advertised upload and download speeds, while mobile providers will report connections by minimum advertised upload and download speeds. We also eliminate various questions on the current Form 477 in order to streamline the Form, avoid duplication with the new deployment collection, and reduce the burden on filers. To improve the quality of the subscription data we collect, we require providers of fixed voice and interconnected VoIP services to file subscription data by census tract, as we currently do for fixed broadband subscription data, rather than the current process of requiring such providers to submit the list of ZIP codes in which they provide service to end-user customers. To enhance our ability to meet public safety needs and obligations, we collect emergency contact information from providers. Finally, we require filers to report certain company identification information, which will facilitate transaction reviews, as well as ongoing vigilance against waste, fraud, and abuse of universal service funding.

5. We are committed to improving the data that the Commission collects even as we continue to explore ways to make the Form 477 filing less burdensome. To that end, we direct the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to explore technical improvements to the Form 477 filing mechanism that may make the process easier for filers, and to examine ways to collect more granular data without increasing burdens.

### II. Background

*A. Development and Evolution of the Form 477 Data Program*

6. The Commission's Form 477 was established in 2000 to provide the Commission with uniform and reliable data not comprehensively available

elsewhere. The information submitted through the Form 477 program improves the Commission's ability to comply with statutory requirements and develop, evaluate, and revise policy, and provides important benchmarks for Congress, the Commission, other policy makers, academic researchers, and consumers. The Commission has revised the nature of the information collected via the form several times during the last decade to ensure that we collect data relevant to a changing marketplace. Nearly four years ago, the National Broadband Plan recommended that the Commission revise its Form 477 data collection to better monitor broadband availability, adoption, and competition. In turn, the Commission launched its Data Innovation Initiative—a whole-agency effort to modernize and streamline how we collect, use, and disseminate data. This Order acts on the commitment to ensure that the Commission has the information it needs for data-driven decision making while minimizing the burden on industry.

7. *May 2000 Form 477.* The Commission established Form 477 to collect data regarding broadband services, local telephone service competition, and mobile telephony services on a single form and in a standardized manner. The original Form 477 collected subscribership data for local telephone service, including data from incumbent local exchange carriers (LECs) and competitive LECs, on the number of voice-grade equivalent lines and fixed wireless channels in service for the provision of local exchange or exchange access service to end-user customers and for resale. The form required broadband and local telephone service providers to provide a list, by state, of the five-digit ZIP codes in which they provided service to end-user customers. The form required mobile telephony providers to report total subscribers served over their facilities, by state, and the percentage of those subscribers billed directly by the reporting provider.

8. The initial Form 477 collected data from facilities-based broadband providers on the numbers of connections to the Internet in service to end users in each state. The Commission tracked connections with information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction. The Commission required providers to identify the technology used to provide the connections, the percentage of connections used by residential customers and small businesses as a group, whether the connections used the provider's own ''last mile'' facilities, and each ZIP code in which the provider had at least one connection in service by means of any broadband technology.

9. *2004 Revisions.* To capture a more comprehensive picture of broadband deployment in rural areas, in 2004 the Commission required submissions from all facilities-based providers of broadband connections. The Commission further required filers to report the percentage of their connections that fell into five speed tiers. Incumbent LECs were required to report the percentage of residential end-user premises in their service areas where DSL connections were available, and cable system operators were required to report comparable information for their cable modem service. Also, filers were required to identify which particular fixed-location broadband technologies were being used to provide connections in individual ZIP codes.

10. *2008 Revisions.* In 2008, the Commission again revised the Form 477 data program to collect more granular subscription data and improve the quality of data on mobile wireless broadband services. The Commission determined that all wireline, terrestrial-fixed wireless, and satellite broadband service providers must report the numbers of subscribers by census tract, broken down by technology and more disaggregated speed tiers, and the percentage of subscribers that are residential. The Commission extended filing requirements to providers of interconnected Voice over Internet Protocol (VoIP) service, requiring them to report the number of subscribers they serve in each state, the percentage of those who are residential, the number of subscribers who purchase the service in conjunction with the purchase of a broadband connection and, of those, the types of connections purchased. The Commission also required interconnected VoIP service providers to report the percentage of subscribers who can use the service over any broadband connection and to report a list of five-digit ZIP codes within each state in which they have at least one subscriber. The Commission determined that terrestrial mobile wireless broadband service providers would continue to submit their broadband subscriber totals on a state-by-state basis, rather than by census tract, and list the census tracts that ''best represent'' their broadband service footprint for each speed tier they offer.

11. *2008 Further Notice.* In the 2008 Further Notice of Proposed Rulemaking, the Commission sought comment on several matters, including whether it should collect information on actual speeds of broadband services; how generally to maintain the confidentiality of broadband data; whether the Commission should conduct and publish periodic consumer surveys on broadband services; and whether and how to institute a national broadband availability mapping program. The Commission tentatively concluded that it ''should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available.''

12. *National Broadband Plan.* The National Broadband Plan emphasized the necessity of ''continuous collection and analysis of detailed data on competitive behavior'' and the need for the Commission to conduct ''more thorough data collection to monitor and benchmark competitive behavior.'' The Plan also recommended that the Commission ''revise Form 477 to collect data relevant to broadband availability, adoption and competition.''

13. *2011 Notice of Proposed Rulemaking.* On February 8, 2011, the Commission released a Notice of Proposed Rulemaking (*NPRM*) seeking comment on whether and how to reform the Form 477 data program to improve the Commission's ability to carry out its statutory duties, while also streamlining and minimizing the overall costs of the program, including the burdens imposed on providers. Today's Order addresses issues that were first raised in WC Docket Nos. 07–38, 08–190, and 10–123 that relate to the Commission's data programs. Given the changes that the industry has experienced since the *2008 Broadband Data Gathering Order and Further Notice,* the increased focus on broadband issues by the Commission and Congress, and the administrative efficiencies that will result from consolidating these issues in a single docket, the Commission incorporated the comments and *ex parte* presentations of WC Docket Nos. 07–38, 08–190, and 10–123 into new docket WC Docket No. 11–10. The Commission sought comment on the collection of five specific categories of data—deployment, price, subscription, service quality and customer satisfaction, and ownership and contact information—asking whether and how to collect such data and seeking comment on the Commission's authority to do so. This Order addresses the collection of deployment data, subscription data, and company identification and contact information. We do not address the collection of price data or service quality and customer satisfaction data at this time, and those issues remain open

for consideration. The *NPRM* also sought comment on the use of third-party data, which entities should be required to report, and the frequency of reporting.

*B. Uses of Form 477 and SBI Data*

14. Data collected through Form 477 and NTIA's SBI program play an essential role in the Commission's work: We use these data to meet our statutory obligation to assess annually the state of broadband availability, update our universal service policies and monitor whether our statutory universal service goals are being achieved, and meet our public safety obligations. We also make the data available to states, researchers, and the public to inform their own activities and decisions regarding voice and broadband networks and services.

15. Many of these obligations flow directly from statute. Significantly, the Broadband Data Improvement Act (or BDIA, which built on section 706 of the Telecommunications Act of 1996) requires that the Commission conduct an annual inquiry concerning the ''availability of advanced telecommunications capability to all Americans.'' As part of this inquiry, the Commission must ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.'' If the Commission's conclusion is negative, it must ''take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.'' The Commission has observed that the data collected on Form 477 to date have been imperfect for the purpose of assessing broadband deployment and availability. Prior to the *2012 Eighth Broadband Progress Report,* the Commission used Form 477 broadband subscription data as a proxy for fixed broadband deployment. Subscription data are a highly imperfect proxy for network deployment. Deployment may be understated if no household in an area has chosen to subscribe to a service offering provided by a network, for example, and capability may be understated if no household has subscribed to the highest speed offering. Because of the limitations of Form 477 subscription data, in the *2012 Eighth Broadband Progress Report,* the Commission relied solely on NTIA's SBI deployment data to assess broadband deployment. The Commission also calculated, for the first time, fixed broadband adoption rates using both Form 477 subscription data and SBI deployment data.

16. Deployment and subscription data are also needed to fulfill our universal service mandate. The Communications Act of 1934, as amended, requires the Commission to base its universal service policies on a number of principles, including that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas.'' The Commission currently relies on SBI data for a number of universal service policies. For example, the Commission has relied on the SBI data to determine areas eligible for support in Connect America Phase I, and has stated that it will rely on SBI data for determining areas eligible for support in Connect America Phase II. In addition, the Commission has sought comment on using SBI data to determine areas eligible for the Remote Areas Fund. Over time, the Commission's reliance on the SBI data to support its universal service policies will transition to reliance on data collected on Form 477. Thus, the data collected on Form 477 are critical to measuring whether we are meeting our universal service mandate.

17. Accurate, detailed data about deployment and subscription also help further the Commission's public safety goals. In disaster situations, for example, we use these data to identify service providers likely to be affected and alternative sources of critical communications. The collection of deployment and subscription data help the Commission monitor the performance of both legacy circuit-switched networks and broadband networks, to ensure that consumers can access emergency services as service providers transition from one technology to the other.

18. Moreover, in addition to the Commission's use of the data, there have been tremendous public interest benefits to other federal and state agencies and the general public from the FCC's and NTIA's data collections. Use of the National Broadband Map application, and access to the data via download or Application Programming Interfaces, has been extensive. The Federal Geographic Data Committee highlighted the success and use of the data in its annual report. The Homeland Infrastructure Foundation Level Working Group has consistently used the broadband deployment data as part of its 17-sector critical infrastructure data asset, and the National States Geographic Information Council have an active working group set up to address the National Broadband Map. Researchers have used these data to address a range of technical and social issues on the communications landscape. Finally, consumers and policy makers alike are more informed about deployment with the open access to data that the National Broadband Map provides, as a recent case study by the Wilson Center made clear.

19. We provide state public utility commissions with access to disaggregated Form 477 subscribership data, provided the commissions have appropriate confidentiality protections in place. Additionally, pursuant to section 106(h)(1) of the Broadband Data Improvement Act, the Commission provides State Broadband Data and Development grant recipients (''eligible entities'' under the BDIA) with access to ''aggregate'' Form 477 subscribership data to support the activities that are funded through the State Broadband Data and Development Grant Program. The data are available to help eligible entities identify and track areas in each state that have low levels of broadband service deployment, and identify barriers to adoption of broadband service by individuals and businesses.

**III. Discussion**

20. The Commission is committed to meeting its obligations through decisions that are supported by current, reliable data. In the *NPRM,* the Commission sought comment on a number of proposals to improve and streamline the Form 477 collection process. As discussed below, we conclude that we should revise our Form 477 collection to include data on deployment of fixed and mobile broadband networks and mobile voice networks, as well as company identification and emergency contact information. We will not require providers to submit broadband deployment data in predetermined speed tiers, and we eliminate the use of speed tiers for broadband subscription data. Instead, we require providers of broadband services simply to provide advertised speeds: The maximum advertised speed for fixed broadband and the minimum advertised speed for mobile broadband. Streamlining the collection in this manner will give the Commission greater flexibility to group and analyze broadband speed data in useful ways. We do not make any changes to the categories of providers that are required to file Form 477.

21. Shortly after release of this Order, the Wireline Competition Bureau will release a data specification that reflects the changes necessary to implement this Order. As they have with every previous

revision of Form 477, Wireline Competition Bureau staff will work with providers to ensure that the providers have the tools they need to complete and file the form in the least burdensome manner possible. We delegate authority to the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to implement any technical improvements or other clarifications to the filing mechanism and forms that will make compliance easier for filers.

*A. Deployment Data*

22. The *NPRM* sought comment on whether voice and broadband deployment data are necessary to fulfill a number of the Commission's statutory and policy goals. Based on the record before us, we conclude that it is in the public interest for the Commission to collect data on deployment of fixed and mobile broadband networks and mobile voice networks. As noted above, many commenters agree that we should collect deployment data in order to help meet statutory obligations.

23. We continue the important collection of deployment data initiated by NTIA's SBI program and make modest but important adjustments to that collection. We will collect data on where people have access to broadband service (what locations have services available), as well as the nature of the broadband services offered in those areas (for example, the speed and technology of the offering). As noted above, most providers have already been submitting deployment data through NTIA's SBI data collection process, but such collection will end next year. The changes we adopt to the SBI collection are designed to reduce filing burdens and increase reliability of the data. For example, the collection will occur in a single, unified process rather than on a state-by-state basis. A single, nationwide filing (that includes both deployment and subscription data) will help eliminate potential variations among states, and reduce to one the number of entities with which a multistate provider must coordinate for its filing. In addition, the elimination of speed tiers will reduce burdens associated with categorizing data into those tiers. The data will also be more reliable because all providers must file, and must certify to the accuracy upon filing. In short, and as we describe more fully below, the collection is carefully tailored to provide the Commission the data it needs to fulfill its mission, while taking steps to minimize the burden on filers. As a result, we expect that communications providers' overall reporting burden will decrease even though the Commission will be collecting more data.

1. Collection of Broadband Deployment Data

24. Our collection of deployment data will differ in some ways from NTIA's SBI data collection in order to ensure that these data will support our efforts to fulfill statutory directives and policy goals. We make several modest but important improvements to enhance the reliability and usefulness of the data. First, under the SBI collection, providers submit data to the states, so there may be as many as 56 different methodologies for collecting SBI data. The Form 477 collection will be a single, uniform filing for all providers, which will reduce potential for distortion or misleading comparisons of the data. A national system should also reduce the burden on multistate filers, who today must often file their deployment data in different ways with different entities. Second, submission of data for NTIA's SBI program is voluntary; the Form 477 filing is mandatory and requires filers to certify that the data are accurate, which will promote complete and accurate data. Third, the SBI does not routinely separate residential from business data. The Form 477 deployment collection will require filers to distinguish, where appropriate, between residential and nonresidential deployment. This will help the Commission to better estimate the level of competition in a market and the number of providers that compete for a particular class of customers. Fourth, the SBI program collects data by speed tiers that differ from the speed tiers the Commission uses to collect subscription data. We eliminate the use of speed tiers for both deployment and subscription data, thus ensuring that speed data are reported consistently across the collection. Fifth, the Form 477 collection will include information on the type of network technology deployed and spectrum bands used for mobile broadband deployment, which will refine our analysis of broadband deployment and spectrum utilization. Finally, Form 477 will not collect existing portions of NTIA's SBI data collection that are not essential to the production of the National Broadband Map, including subscriber-weighted average speeds by county.

25. Some commenters argue that the Commission need not collect broadband deployment data at this time because broadband deployment and availability information is available through NTIA's SBI data collection, which is made available through the National Broadband Map. As noted above, NTIA's SBI collection of deployment data is scheduled to expire in 2014; given the critical role such data play in meeting the goals of Congress and the Commission, it is our responsibility to ensure that no gap exists in the collection of these data. We are, however, designing the transition such that it will likely include one overlapping collection: We anticipate that our first collection of deployment data on Form 477 will take place in September 2014, for data as of June 30, 2014. An overlapping collection helps us ensure that our own collection systems are functioning properly by allowing us to cross-check our results against NTIA's. More than one overlap would provide us greater assurance, but would also increase the burden on filers, which we are striving to minimize. In any event, the Commission is likely to rely heavily on SBI data collected in the overlap collection, as the SBI collection is more settled and providers may still be adjusting to the revisions to Form 477.

26. We disagree with commenters who argue that the BDIA, which revised section 706, specifies that the collection of broadband deployment data needed to meet the requirements of section 706 should be accomplished through periodic surveys and reliance on Census Bureau data. While the BDIA makes mention of these tools, section 706 does not identify these tools as the sole source of data for meeting our statutory responsibilities. Nor does section 706 preclude the Commission from seeking broadband data from service providers. Furthermore, whereas the section 706(a) inquiry involves broadband deployment and availability, the consumer survey is focused on ''the national characteristics of the use of broadband service capability,'' and the Census data focus exclusively on subscribership. Thus the consumer survey and Census Bureau data alone are insufficient to complete the section 706(a) inquiry. Finally, the deployment data that will be reported on Form 477 are not used by the Commission solely to fulfill its duties under section 706. As explained above, we use these data to meet other statutory obligations as well. We have evaluated existing data sources, and we believe that the changes to the Form 477 data collection that we adopt today represent the least burdensome means of obtaining the data the Commission needs to fulfill its statutory duties.

27. We also disagree with commenters who assert that data already collected on Form 477, in conjunction with data available from Mosaik and other sources, including providers' Web sites, are sufficient to inform the Commission

about the expansion of broadband networks. While we do use commercial data routinely, we do not agree, in this case, that reliance on third-party deployment data will meet our needs. Among the problems the Commission faces in using commercial data are restrictions on reuse and publication of the data on which the Commission would rely. In addition, the Commission found in the *2012 Eighth Broadband Progress Report* that while Mosaik data provide a useful tool for measuring developments in mobile broadband deployment, they may overstate the extent of mobile broadband coverage. Furthermore, because Mosaik reports advertised coverage as reported to it by mobile wireless providers, each of which may use a different standard for determining coverage, the Mosaik data are not consistent across geographic areas and service providers. Finally, tracking down deployment information on providers' Web sites would not provide consistent data for analysis, would be time consuming, and might not be comprehensive. The information on providers' Web sites is not certified and is generally not available in a format consistent enough to provide the level of geographic granularity the Commission requires.

28. We find that it is necessary for the Commission to collect nationally standardized deployment data from *all* providers of broadband and mobile voice services to meet our obligations to assess the state of broadband availability, update our universal service policies and monitor whether our statutory universal service goals are being achieved, and meet our public safety obligations. Satellite broadband providers urge the Commission to exempt them from any required reporting of deployment information on Form 477, arguing that it would be redundant because the extent of a satellite broadband provider's coverage area is already a matter of record as part of a satellite application or letter of intent. Although the Commission requires space station applicants to provide predicted antenna gain contour(s) for each satellite transmit and receive beam, the antenna gain contour is part of the general description of the satellite's capabilities and is not the same as deployment information. Without a comprehensive, uniform dataset with which to evaluate the state of broadband deployment by all providers, the Commission's analyses will be incomplete. This is particularly important given the difference in speed and capacity offered by different generations of satellites and their different service areas. Accordingly, we will require satellite broadband providers, in addition to all providers of broadband and mobile voice services, to submit deployment data on Form 477. For purposes of Form 477, satellite voice and broadband providers are treated as fixed voice and broadband providers.

29. We continue our current practice of requiring all providers to submit relevant data. While we recognize that submitting any information imposes burdens, which may be most keenly felt by small providers, we conclude that the benefits of having comprehensive data substantially outweigh the burdens. One of the primary objectives of Form 477 is to inform the Commission's efforts to encourage broadband deployment on a reasonable and timely basis to *all* Americans. We would miss important data relevant to this objective if we were to exempt small providers, which are likely to serve rural or insular areas of the United States, where barriers to deployment are typically the highest. Additionally, obtaining this information from small and rural providers helps ensure that Connect America Fund support is indeed increasing broadband deployment and will help the Commission keep its universal service policies appropriately tailored over time. At the same time, we are cognizant of the burdens of data collections. We therefore have taken steps to minimize burdens, including by making our deployment collection consistent, to a large extent, with NTIA's SBI data collection. For all of these reasons, we conclude that the benefits of collecting deployment data outweigh the burdens on small providers that may be associated with collection of these data.

30. *State Expertise in Broadband Deployment Collection.* As described above, our collection of broadband deployment data will be similar—although not identical—to NTIA's current SBI program collection of broadband deployment data. The filing mechanisms for the two collections, however, will differ significantly. Notably, in NTIA's SBI data collection, providers file their data with state entities, rather than directly with the federal government.

31. While we believe that filing deployment data with a single agency, rather than with as many as 56 separate entities, should make the mechanics of submitting deployment data less burdensome for filers, we also recognize that as a result of the SBI collection, the states have gained valuable experience with the collection of broadband deployment data. Indeed, many states have created new offices or agencies focused on broadband deployment issues, or tasked existing offices with such duties, and they potentially continue to play an important role in broadband issues. We encourage providers to continue to work with states on broadband issues. In addition, while the states will no longer participate directly in the collection and collation of broadband deployment data, there may be another role the states might play, such that the Commission, other government agencies, industry, and consumers continue to benefit from their expertise. We therefore direct the Wireline Competition Bureau to explore ways in which we might use the states' expertise to strengthen our own collection of broadband deployment data.

a. Fixed Broadband

32. We require each facilities-based provider of fixed broadband service to provide a list of all census blocks in which it makes broadband service available to end users. As noted above, for purposes of Form 477, satellite broadband service providers are considered to be providers of fixed broadband service. Facilities-based providers of fixed broadband service will also be required to report the maximum speed offered in each census block where they offer service, breaking out reporting for residential and nonresidential services where appropriate, and by technology. We delegate authority to the Wireline Competition Bureau to determine whether the categorization of fixed-location technologies in the current Form 477 is adequate for collecting deployment information and to specify different categories if necessary.

33. *Geographic Area.* Based on the record, we conclude that we should continue the SBI's practice of collecting fixed broadband deployment data by census block, but discontinue disparate treatment of census blocks larger than two square miles. Several commenters agree that deployment data should be collected at this geographic level. We disagree with commenters who assert that reporting by census block is too burdensome. We find that reporting by census block will not be unduly burdensome for the majority of fixed broadband service providers, as many of these providers already voluntarily report deployment data by census block to NTIA's SBI program. Fixed broadband providers have, since June 2010, submitted the characteristics of their broadband deployment by census block to state mapping designees.

34. We recognize that the Commission currently collects fixed broadband subscription data by census tract, whereas we will collect fixed broadband deployment data by census block. Some commenters assert that the Commission should collect both deployment and subscription data at the same geographic area level. While we recognize that there may be benefits to collecting deployment and subscription data at the same geographic level, we find that continuing with the SBI collection's level of granularity for deployment data offers us opportunities for analysis at roughly the same or lesser burden to filers that they experience now. Therefore, we find that, on balance, the benefits of retaining the census block collection for deployment data, even while subscription data are collected at a more aggregated level, outweigh the burdens and the disadvantages of an asymmetrical collection.

35. At this time, we decline to gather fixed broadband deployment data at a level more granular than the census block because the added complexity and burden are unlikely at this time to provide a significant insight into how many residences and businesses lack access to service. Although some commenters advocate for address-level reporting, many providers do not maintain broadband network deployment data on an address-by-address basis. Also, rural areas where networks are deployed may not have ''street'' addresses assigned. We are not persuaded that the benefits of requiring address-level data would outweigh the overall increase in the filing burden. We acknowledge that NTIA's SBI program collects address- and/or street-segment data for fixed broadband service in particular census blocks—those larger than two square miles. Not only do we not expand this requirement to other census blocks, but we remove it for large blocks as well, thus reducing the burden on filers that serve large blocks. While there are approximately 6.2 million populated census blocks, there are approximately 118.1 million households, approximately 133.3 million housing units, and millions of business locations in the United States. Thus, moving from census block to address-level reporting could lead to a significantly higher burden. In addition, while there is a definitive source for the location and size of census blocks (the U.S. Census Bureau), there is no similar source for the location of all homes, making it substantially harder to map provider submissions and relate those to end-user locations. Some commenters point out that accuracy may actually decrease when granularity increases to the address level because all service providers do not necessarily record addresses in a standardized, uniform manner. We conclude that requiring providers to report fixed broadband deployment data by census block appropriately balances the burdens of reporting this information to the Commission with the level of granularity required to carry out our statutory duties.

36. *Speed data.* Instead of defining speed tiers for the reporting of fixed broadband deployment data, as the SBI collection does, we will require filers to provide the maximum advertised speed for each technology used to offer service in each census block. For consistency in our collection, we adopt the same approach for subscription data, which will also reduce filing burdens by avoiding the need to categorize the same service offering differently for deployment and subscription collections.

37. Relevant speeds and broadband technologies evolve over time. As a result, the Commission has found it necessary in the past to revise the speed tiers it uses to collect data. Speed tiers may be revised for a variety of reasons, including reflecting modern service offerings for purposes of assessing broadband availability in the Commission's broadband progress reports and reflecting Connect America policies and requirements. But when broadband providers assign their services a specific speed tier, any changes to those tiers are significantly delayed until the providers report, and the Commission publishes, data sorted into the revised tiers. In addition, changes to the speed tiers limit the Commission's (and others') ability to analyze data over time by potentially removing tiers that had been used previously. We believe that requiring the submission of maximum advertised speed per census block, rather than requiring filers to organize their deployment data into speed tiers before submitting it, will increase the usefulness of the data by allowing the Commission to define speed tiers as needed for its purposes, without requiring modifications to the form itself. It will also allow the Commission and others to analyze speeds over time without regard to the categories of speed into which providers reported in past years. Finally, we believe that not requiring providers to categorize their offerings into our tiers will reduce their reporting burden.

38. For fixed broadband deployment data, we also tailor our treatment of speed reporting to reflect how services are offered to residential and nonresidential consumers. For residential broadband deployment, as with the SBI collection, Form 477 will collect the fastest advertised speed providers offer potential subscribers in each census block covered by their deployment. For nonresidential broadband deployment, the form will collect the maximum contractual committed information rate offered on nonresidential Internet access services. Form 477 will require filers to distinguish between residential and nonresidential deployment where appropriate. Accordingly, to the extent that a provider does not make the distinction in its filing between residential and nonresidential deployment, it will not distinguish between advertised and contractually committed speeds.

39. *Advertised vs. Actual Speeds.* The Commission currently collects data on advertised speeds. The Commission sought comment on whether it should continue to collect data only on advertised speeds, or whether, for example, providers should provide information about actual speeds by geographic area, or speeds that extend beyond the access network (for example, end-to-end speeds that reflect an end user's typical Internet performance). We conclude that it is not appropriate or feasible to collect actual speed information from broadband providers via Form 477. Many commenters expressed concern because there is no way for providers to report actual speed information in a meaningful way. Commenters explain that the collection of these data is a highly complex, time consuming, and expensive undertaking that requires the use of specialized equipment in the providers' networks and at their customers' premises. As the Commission found in 2008, ''the record of this proceeding does not identify a methodology or practice that could be applied, consistently and by all types of broadband filers, to measure the information transfer rates actually observed by end users.'' We continue to believe that conclusion is correct.

40. The Commission has undertaken a program to measure actual speeds directly for a sample of end users of fixed broadband, and is considering a similar program for mobile broadband. These initiatives are more cost effective than using the Form 477 data collection for this information, and have produced speed information useful to policymakers, consumers, and other stakeholders. In August 2011, the Commission released a report on actual broadband speeds, based on data submitted by broadband providers and

end-user volunteers. The report established for the first time that the majority of residential wireline broadband consumers are receiving performance close to the level advertised by their providers. It also identified providers that fell short of advertised speeds. On July 19, 2012, the Commission's Office of Engineering and Technology and Consumer and Governmental Affairs Bureau released the *Second Measuring Broadband America Report.* The *Second Measuring Broadband America Report* found ''striking across-the-board improvements on key metrics underlying user performance.'' In particular, the *Second Measuring Broadband America Report* found that Internet service provider (ISP) promises of performance are more accurate, providers are more consistent in their ability to deliver advertised speeds, and consumers are subscribing to faster speed tiers and receiving faster speeds. Further, the Commission is considering questions concerning the types of metrics for speed or other performance characteristics that could prove useful to consumers. We expect to continue our efforts to improve the availability of information describing broadband performance in the United States.

41. As an alternative to requiring the reporting of actual speeds, the Commission sought comment in the *NPRM* on whether it should collect data on contention ratios (the ratio of the potential maximum demand to the actual bandwidth available) or some other measure of network congestion. In response, Free Press asserts that contention ratios are a useful proxy for actual speeds because they reflect the degree to which customers share capacity, and thus the level of oversubscription on a local network. However, several commenters dispute the usefulness of contention ratios, asserting that a contention ratio ''would mean nothing to the typical consumer and little, if anything, to most policymakers,'' and that given the many variables that would go into determining a contention ratio, ''the resulting data are unlikely to be of any practical use or relevance.'' These commenters assert that a requirement to report contention ratios would be complex and burdensome, as there is no single ''contention ratio'' applicable to a given subscriber or network because broadband traffic traverses numerous segments in a network, each of which has a different contention ratio. Although we believe that understanding network capacity and congestion concerns is useful, we agree that it would be impractical to collect such data through Form 477. We agree with those commenters who argue that the burden of calculating contention ratios would, at this time, outweigh any useful benefits that the Commission might glean from such information. We thus decline to require providers to report contention ratios.

b. Mobile Broadband

42. As with fixed broadband, we continue NTIA's SBI collection of mobile broadband coverage areas, with certain modifications to reduce burdens while improving the data to fulfill our statutory purposes and policy goals. These modifications include additional technology codes, separation of coverage areas by unique combinations of technology, spectrum and speed, and minimum, rather than maximum, advertised speed. Specifically, for each mobile broadband network technology (e.g., EV–DO, WCDMA, HSPA+, LTE, WiMAX) deployed in each frequency band (e.g., 700 MHz, Cellular, AWS, PCS, BRS/EBS), facilities-based mobile broadband providers should submit polygons representing the nationwide coverage area (including U.S. territories) of that technology. The data associated with the coverage area should depict the coverage boundaries where, according to providers, users should expect the minimum advertised upload and download data speeds associated with that network technology in that frequency band. If a provider advertises different minimum upload and download speeds in different areas of the country using the same technology and frequency band (e.g., HSPA+ on AWS spectrum), the provider should submit separate polygons showing the coverage area for each speed. If a provider does not advertise the minimum upload and/or download speeds, the provider must indicate the minimum upload/download data speeds that users should expect to receive for the deployed technology in the given frequency band.

43. Collecting these deployment data on mobile broadband network technologies, in conjunction with data on spectrum and minimum advertised speeds, will improve the data needed to fulfill our statutory purposes and policy goals. As with fixed broadband deployment data, we direct filers to report data on advertised speeds and reduce the burden of associating these speeds with predetermined speed tiers. To reduce burdens, we also allow mobile broadband providers to submit coverage maps on a nationwide rather than state-by-state basis. To reflect changes in both Geographical Information Systems (GIS) and mobile technologies and spectrum bands used over time, the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, will update coverage resolution, network or transmission technologies and spectrum bands used on Form 477 as necessary.

44. Currently, the Form 477 collection requires facilities-based mobile wireless broadband service to submit data indicating census tracts in which ''service is advertised and available to actual and potential subscribers,'' and such service offerings must be grouped into predetermined speed tiers. We retain this collection while taking measures to reduce the burden by eliminating the requirement that providers group their offerings into speed tiers. These data remain necessary to determine accurately mobile broadband service availability in cases where a provider's mobile network deployment footprint differs from its facilities-based service footprint, that is, where service is advertised and available to actual and potential subscribers. Deployment and availability are often the same for providers but, in some instances, they are not. The combination of data on network deployment, service availability, and subscription will assist the Commission in a number of analyses, including those in the Broadband Progress Reports and Mobile Wireless Competition Reports, the state of competition in the mobile wireless industry, and review of mergers and spectrum transactions.

45. The mobile broadband deployment data, in conjunction with similar data on mobile voice deployment, will enable the Commission to analyze the extent of deployment in different spectrum bands, and technologies. These data will enable us to analyze deployment in different spectrum bands, and to structure our spectrum, infrastructure, and competition polices effectively and efficiently in a rapidly evolving mobile marketplace. The National Broadband Plan states that mobile broadband is poised to become a key platform for innovation in the United States over the next decade. For mobile service deployment, spectrum is an essential input as the transmission pipe. Understanding how spectrum bands and technologies have actually been deployed in different areas will greatly facilitate the formulation of sound and informed spectrum policies, including how best to make additional spectrum available for licensed, unlicensed and opportunistic uses. The mobile

broadband deployment data, indicating speed, technology, and spectrum band used, will enable us to better assess the wireless marketplace to ensure that our spectrum and competition policies accommodate growing demand and evolving technologies in the provision of mobile broadband services.

46. Today, NTIA's SBI collection includes information on speed and spectrum used for the provision of wireless broadband services. Spectrum information, however, is not clearly linked to coverage boundaries. Defining the standard for reporting network coverage boundaries that reflect the broadband speeds of a deployed technology in a given frequency band will ensure that we have consistent and comparable deployment data by various providers. Collecting spectrum information in this manner also will give us better information on the actual use of spectrum bands, enabling informed spectrum management policies.

47. Certain commenters argue that other sources of data on spectrum use are already available to the Commission and that the collection of spectrum data through Form 477 is unnecessary. However, the sources cited by commenters, including the Spectrum Dashboard and license build-out notifications, are insufficient for analyzing deployment by technology and by band. The Spectrum Dashboard provides information on spectrum holdings but not the extent to which providers are using their spectrum to deploy networks and offer services. The licensee build-out notifications do not indicate the type of service or technology deployed, are filed infrequently, and in some cases, are not a reflection of networks that are being used to offer service. Sprint suggests that the Commission could ask providers to respond on an ad hoc basis to inquiries about their spectrum use in particular areas. However, this method would not provide us with the complete set of data necessary to perform the comprehensive analyses described above.

48. We find that burdens on mobile wireless providers associated with providing digital representations of and geospatial data on their network coverage areas are not significant, and are outweighed by the public interest benefits associated with our collection. The geospatial data we are collecting on spectrum and technology are used by mobile service providers for radio frequency (RF) network design and are an integral part of every mobile service provider's ordinary course of business. Accordingly, mobile deployment data by spectrum bands and network technology should be readily available to mobile service providers given that any mobile network deployment plan would include both the spectrum and the network technology to be used for such deployment.

49. In addition, many providers develop and maintain such data in order to publish maps of their coverage areas on their Web sites and in other promotional materials, and certain operators have provided network coverage boundaries to Mosaik. Certain providers also have submitted coverage area boundaries to the Commission as part of wireless transaction proceedings, and many providers have submitted coverage area boundaries in the SBI data collection. There are multiple GIS (Geographical Information Systems) platforms capable of creating and managing geospatial data on mobile network coverage areas, and there are many GIS specialists and engineering consultants in the United States who are able to provide expertise and develop such data for providers that do not have internal GIS resources.

50. In the *NPRM,* the Commission sought comment on how any reporting should account for the variability of signal strength and capacity in a network that includes mobile users. The record indicates that measuring signal strength is a complex and time-consuming endeavor due in significant part to the extreme variability in the propagation and reception of wireless signals. The strength of the signal received by any given subscriber can be affected by a broad range of factors, including topography, foliage, weather, type of structure for in-building reception, the number and behavior of other subscribers connected to the same cell site, and whether and how fast the subscriber is moving through the cell site's coverage area. As a result, mobile signal strength, speed, and capacity measurements can change from minute to minute or between locations. While the data would be valuable, we are not convinced that there is a practical, reliable way at this time to assess signal strength and capacity through a standardized data collection. We therefore decline to revise Form 477 to require providers to account for these variables.

2. Collection of Voice Deployment Data

a. Fixed Voice

51. In the *NPRM,* the Commission sought comment on whether the collection of fixed voice network deployment data is warranted. The national telephone subscription rate has remained high over the last decade, indicating expansive (indeed, nearly ubiquitous) availability of service. The Wireline Competition Bureau recently collected data on the areas served by incumbent local exchange carriers through the Study Area Boundary Data Collection, and these boundaries typically show the area that an incumbent LEC is obligated to serve with fixed voice service. For other fixed providers, we will be able to infer voice availability from their fixed broadband deployment data, as many providers offer both voice and broadband over the same network. Collecting additional fixed voice network deployment data on Form 477 would be largely redundant and would impose an additional burden on voice providers. Therefore, we will not require providers of fixed voice services to report deployment data on Form 477.

b. Mobile Voice

52. We will require facilities-based mobile wireless voice providers to submit geospatial data of their coverage area boundaries. Unlike fixed voice availability, which, as we explain above, is relatively stable, the combination of footprint, technology, and spectrum for mobile voice services is changing more rapidly. Collecting mobile voice deployment data therefore provides significant public interest benefits that outweigh the burdens associated with the collection. In any event, we find that requiring mobile wireless providers to submit their coverage area boundaries will not add a significant burden.

53. Providers should submit polygons representing geographic coverage nationwide (including U.S. territories) by transmission technology (e.g., GSM, CDMA, HSPA, VoLTE) and by frequency band (e.g., 700 MHz, Cellular, PCS, AWS). For example, if a provider offers both GSM and CDMA voice services in both the Cellular band and the PCS band, then this would result in four different polygons: (1) GSM in the Cellular band; (2) CDMA in the Cellular band; (3) GSM in the PCS band; and (4) CDMA in the PCS band. The polygons should represent voice coverage boundaries where providers expect users to be able to make, maintain, and receive voice calls. To reflect changes in both GIS and mobile technologies, and spectrum bands used over time, the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, will update coverage resolution, network or transmission technologies, and spectrum bands used on Form 477.

54. As discussed above, the Spectrum Dashboard and license build-out

notifications are insufficient for analyzing deployment. The Spectrum Dashboard or the licensee build-out notifications do not indicate the type of service or technology deployed, are filed infrequently, and in some cases, are not a reflection of networks that are being used to offer service. The Commission currently licenses a dataset from a commercial source, Mosaik, for data on mobile voice network deployment. Mosaik provides coverage boundary maps for every facilities-based mobile wireless provider and each mobile network technology a provider has deployed, including those networks used to provide mobile voice service. However, Mosaik reports advertised coverage as reported to it by many mobile wireless operators, each of which may use a different definition of or standard for determining coverage. Therefore, the data are not consistent across geographic areas and service providers. In addition, the Mosaik data do not capture any information about the spectrum bands that operators use for mobile network deployment. Hence, we conclude that the Mosaik data are not sufficient for monitoring mobile voice network deployment and the mobile voice technology transition at this time, and that it is now necessary to collect mobile voice deployment data through Form 477.

55. Accordingly, we will require providers of mobile wireless voice service to end users to submit digital representations, with the associated data discussed above, depicting their mobile voice network coverage areas. These data, in conjunction with similar data on mobile broadband deployment discussed above, will enable the Commission to analyze the extent of deployment in different spectrum bands. It also will help the Commission project market trends and adjust its spectrum and competition policies. We also find that collection of mobile voice deployment data will assist in the Commission's efforts in the areas of emergency response and disaster relief by identifying the providers that typically serve an affected area.

*B. Subscription Data*

56. Subscription information enables the Commission to fulfill its statutory and regulatory duties. For the past thirteen years, the collection of subscription data via Form 477 has served as the Commission's principal tool for monitoring telephone and broadband subscriptions and competition. Form 477 subscription data also enable the Commission to evaluate barriers to adoption, administer and reform the universal service program, monitor the PSTN-to-IP conversion by providing insight into how many customers rely on each type of network technology in each area, and better assess which services are purchased independently or in combination with other services. These data also support the Commission's efforts to ensure public safety by providing a measure of what networks and providers customers rely on in each area.

57. Commenters generally support the continued collection of subscription information for voice and broadband services. Indeed, many commenters acknowledge the importance of collecting subscribership data because, for example, ''it provides valuable insight for both competition monitoring and public safety purposes, especially because it indicates the degree to which subscribers are reliant upon particular networks for services and E–911 delivery.'' Because subscription data are necessary to allow the Commission to fulfill its statutory purposes, we continue to collect broadband and voice subscription data. For the reasons set forth below, we revise the subscription data speeds to better reflect current market offerings and improve the Commission's ability to assess broadband deployment and adoption. We also will now collect fixed voice and interconnected VoIP subscription data by census tract.

58. We eliminate questions and requirements on the current Form 477 that require certain broadband providers to report information about the availability of broadband service, as opposed to information about actual subscribership to broadband service. These questions are no longer necessary in light of the new Form 477 collection of broadband deployment data, discussed above. Specifically, we will eliminate Part I.B of the current form, which requires, by state: (1) Each incumbent LEC with any DSL connections in service to report its best estimate of the percentage of residential end user premises in its service area to which its DSL connections could be provided using installed distribution facilities, (2) each cable system with any cable modem connections in service to report its best estimate of the percentage of residential end user premises in its service area to which its cable modem connections could be provided using installed distribution facilities, and (3) each network operator serving any terrestrial mobile wireless broadband subscribers to report the total number of subscribers (*i.e.,* including broadband, broadband plus voice, and voice-only subscribers) whose mobile device is capable of sending or receiving data at information transfer rates exceeding 200 kbps in at least one direction. In addition, we eliminate the requirement that fixed broadband providers submit data for every census tract within their ''defined service territory'' regardless of the number of subscribers in the tract. By eliminating these questions, we protect against duplication in our collection and reduce the burden on filers by narrowly tailoring our collection of data to those most useful to the Commission.

59. In addition, we eliminate the requirement that broadband providers submit state-level data on the percentage of their connections that are billed to end users and the percentage that are equipped over their own facilities. The Commission typically does not rely on these metrics at this level for competitive analysis, nor has it reported them in its semiannual *Internet Access Services* reports. Eliminating them would greatly simplify the revised Form 477 and its data collection interface, and would reduce burden for filers.

60. We also modify our current data collection in several ways to eliminate unnecessary information and produce data better suited to competitive analysis. We remove the requirement that providers of local exchange telephone service report the number of lines provided to unaffiliated communications carriers as UNE-Platform (UNE–P). We also eliminate reporting of the percentage of end-user lines provided over UNE–P. In addition, providers of interconnected VoIP service will no longer be required to report the number of companies purchasing their VoIP components or service for resale. The Commission typically does not rely on this metric at this level for competitive analysis. We also simplify the categories of information interconnected VoIP providers must provide. Currently, the Form requires filers to report the percentage of VoIP subscriptions with nomadic functionality. We find the burdens of this reporting distinction do not outweigh the benefits and so eliminate the nomadic category. Finally, we will require local exchange telephone service providers to report, by state, how many of their access lines are bundled with broadband. This information about bundling can be evidence of consumers' willingness to switch voice service providers, and hence improves our competitive analysis.

1. Speed Data

61. The *NPRM* sought comment on whether the Commission should reduce the number of speed tiers that broadband providers report, and whether to adopt the same speed tiers for subscription and deployment. We currently collect subscribership data for eight tiers of advertised download speeds and nine tiers of advertised upload speeds, leading to 72 possible combinations.

62. In order to conform our collection of broadband subscription data to the approach we take for broadband deployment data, we eliminate the use of speed tiers for broadband subscription data. Providers will no longer organize broadband subscription data into predetermined tiers. Instead, filers will be required to provide the number of broadband connections by the advertised speeds associated with each product subscribed to in the relevant geographic area. Fixed providers will report connections by the maximum advertised upload and download speeds in each census tract, while mobile providers will report connections by minimum advertised upload and download speeds in each state. These changes to how we collect speed data will permit the Commission to conduct a consistent analysis of subscription and deployment data and, because they will no longer be required to categorize the number of connections into our speed tiers, will reduce burdens on filers. Despite some commenter assertions to the contrary, we conclude that on balance, there are advantages to having a consistent collection of deployment and subscription speed data. For example, a consistent collection will make the Commission's analysis of broadband availability simpler and more reliable. Moreover, over the long term, unifying the collection of speed data for deployment and subscription will minimize providers' burdens.

63. For the reasons stated above in the section addressing deployment data, we find that it is not appropriate or feasible to collect actual speed information from broadband providers via Form 477 at this time. Accordingly, providers will report subscription speed tier information based on advertised speed.

2. Geographic Area

a. Fixed Voice and Interconnected VoIP

64. Form 477 currently collects fixed voice and interconnected VoIP subscription data at the state level and requires providers of these services to submit a list, by state, of the five-digit ZIP codes in which they provide service to end-user customers. As noted above, for purposes of Form 477, satellite providers of voice services are considered fixed voice service providers. For the reasons set forth below, we will now collect the number of total and residential fixed voice and interconnected VoIP subscriptions by census tract, much like we currently do for fixed broadband subscription data. We will no longer require providers of these services to submit the list of ZIP codes in which they provide service to end-user customers.

65. Collecting fixed voice and interconnected VoIP subscription data by census tract will improve the Commission's ability to measure and conduct analyses of retail voice competition. We currently collect fixed broadband subscription data by census tract, and consumers often purchase fixed broadband and voice services together. Collecting fixed voice and interconnected VoIP subscription data at the same geographic level as fixed broadband data will allow us to calculate retail market shares for voice services by census tract in most census tracts, and will give us a better understanding of competition in the remainder. The state-level fixed voice and interconnected VoIP subscription data currently collected on 477 are insufficiently granular to provide insight into competition, and, for example, does not enable calculation of retail market shares—even at the state level because providers' footprints do not cover entire states.

66. Collecting fixed voice and interconnected VoIP subscription data at a more granular geographic level will permit the Commission to analyze subscription patterns for particular populations that are identifiable at the census tract, such as consumers residing in rural areas. Collecting fixed voice and interconnected VoIP subscription data by census tract will also help the Commission analyze fixed voice adoption in rural, insular, and high-cost areas of the country with greater refinement than at the state level, in accordance with the Commission's universal service policies to ensure that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, . . . have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas.'' Further, collecting data for these services by census tract will provide more insight into incumbent local exchange carrier (ILEC) access line loss trends. ILECs frequently point to their overall line losses as justification for regulatory relief. We currently lack data showing the geographic distribution of these line losses, and whether customers leaving ILECs are going to cable or cutting the cord.

67. We recognize that some fixed voice and interconnected VoIP service providers may not be accustomed to reporting subscription data by census tract and may not currently have the internal capability to associate subscriber addresses with census tracts. However, providers that offer both fixed broadband and fixed voice services already report fixed broadband subscription data to the Commission by census tract, and those who also participate in NTIA's SBI program also report fixed broadband deployment data by census block. Accordingly, many fixed voice and interconnected VoIP service providers already have experience using census data. The burden associated with requiring these providers to file fixed voice and interconnected VoIP subscription data by census tract will likely be small because such providers will be able to leverage existing processes for voice subscriptions. To the extent that filers do not have prior experience using census data, we believe that collecting subscription data for fixed voice and interconnected VoIP by census tract will improve the quality of the data we receive to such a degree that the benefits outweigh any additional burden on providers. As the Commission has explained, census tracts ''are more stable and static'' than ZIP codes, ''correspond more consistently to actual locations, are less likely to reveal individual identifiable information about consumers, and can be correlated with valuable demographic data (including race, income, and education).''

68. Some commenters assert that the Commission should collect both subscription and deployment data at the same geographic area level. Although we recognize that there may be benefits to collecting deployment and subscription data at the same geographic level, we decline to collect subscription data at a level more granular than the census tract at this time. As we have discussed, collecting fixed voice, interconnected VoIP, and broadband subscription data by census tract provides substantial benefits without unduly burdening filing entities. At the same time, we believe that more granular subscription data would be preferable, if the burden on filers were not significantly increased. If there were no or minimal additional burden to file by census block than by census tract, we would favor collecting subscription and

deployment data at the same geographic level.

*C. Further Ways To Reduce Form 477 Filing Burdens*

69. We are committed to improving the data that the Commission collects even as we continue to explore ways to make the Form 477 filing less burdensome. We therefore direct the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to explore technical improvements to the Form 477 filing mechanism that may make the process easier for filers. The Bureaus should explore, for example, whether a client-side software application that would automate for providers some of the potentially burdensome tasks of sorting, formatting, and geocoding their data might reduce the burden of filing Form 477. The Bureaus should test any client-side software application with different filers representing different segments of the industry and obtain their feedback. If, through this process, the Bureaus identify a way to make the filing process less burdensome, we direct the Bureaus to make such software application available to assist filers in complying with the obligations set forth in this Order.

70. In addition to making current filing obligations less burdensome, technical improvements to the filing mechanism may also make it possible to collect more granular data without a significant increase in burden to filers. For example, a software solution may reduce the filing burden sufficiently to justify collecting more granular subscription data. If the development and testing process described above proves this to be the case, we may consider moving voice and broadband subscription data, for fixed and possibly mobile services, to the census block. Even if the Commission chooses not to collect mobile subscription data by census block, any technical improvements developed to collect fixed subscribership data by census block may be useful in collecting mobile subscribership at another sub-state geography (such as counties) with minimal burden. Technical improvements to the Form 477 filing process may also enable the Commission, in the future, to consider collecting additional data.

*D. Company Identification and Contact Information*

71. We require entities filing Form 477 to provide additional company identification and contact information. In addition to the current Form 477 requirements, we will require filers to report the company's Universal Service Administrative Company (USAC) study area codes, USAC 499 identification numbers, and Web site address. We will also require that filers report the title of their certifying official and the name, phone number, and email address of their emergency operations contact. This information will assist the Commission in fulfilling its universal service mandate, evaluating merger, forbearance, and other applications, and protecting public safety.

72. We require additional company identification information for several reasons. The Commission currently allows Form 477 filers to consolidate data for multiple operations within a state on a single submission, and filers are permitted to determine the organizational level at which they submit their filings. As noted in the *NPRM,* a parent or holding company may file on behalf of its subsidiaries or the subsidiaries may file their own Form 477. Accordingly, we will now require filers to report, in each 477 filing, the company's Universal Service Administrative Company (USAC) study area codes, USAC 499 identification numbers, and Web site address. This information enables us to aggregate, compare, and analyze, by a common provider, the various data we collect through different forms and filing requirements.

73. Some commenters assert that additional company identification information is not necessary and will not ''meaningfully enhance the Commission's general understanding of the broadband ecosystem, or its general understanding of the state of local competition.'' We disagree. Companies reporting data to the Commission via Form 477 often have multiple relationships with the Commission, and collection of these data would improve our understanding of the ownership and corporate affiliations of voice and broadband providers. In addition, knowledge of common ownership relationships among different operating companies in a region is essential to understanding competition, including conducting merger analyses, as well as ongoing vigilance against waste, fraud, and abuse of universal service funding. The current reporting requirements do not provide a sufficiently clear picture of the interrelationships that may exist among various providers and of the markets for which data are reported.

74. We recognize that the Commission currently collects some company identification information in other contexts. Although these collections do not duplicate the information collection we adopt in this Order—they apply to small subsets of the universe of Form 477 filers and do not request the same level of detail—we nonetheless take precautions to ensure that no entity is burdened with duplicative filings. Accordingly, we direct the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to identify any circumstances in which the collection of company identification information on Form 477 may duplicate another Commission collection, and to exempt filers from the latter in those instances.

75. We will also require that filers report the name, phone number, and email address of their emergency operations contact. The information currently collected by Form 477 is not sufficient for use in promptly contacting providers' network operating centers during emergencies. Some commenters support the collection of additional emergency contact information. For example, Qwest states that this information should be collected, since ''[e]mergency contact information could be added to Form 477 without placing any material burden on the service providers.'' However, other commenters argue that Form 477 is not the appropriate vehicle for the Commission to collect this contact information.

76. The Commission needs this emergency operations contact information to fulfill its statutory public safety mandates. The Commission must be able to directly contact individuals who can provide information on network status during natural disasters or other emergencies. As a mandatory, recurring filing by providers of telephone and broadband service, we find that Form 477 will be a particularly effective vehicle for collecting emergency contact data that are comprehensive and current, with a relatively small burden on filers. The Commission currently has no structured, recurring, mandatory collection of contact information in place specifically for use in emergencies affecting telephone and/or broadband networks. The Commission's Disaster Information Reporting System (DIRS) does collect contact information, but only on a voluntary basis for use during large-scale disasters. It is important for the Commission to have contact information from all providers that file Form 477, including those providers that do not choose to participate in DIRS, and that this information is updated consistently.

77. Finally, filers of Form 477 will be required to report the name, title, and contact information of their certifying official. This essential information provides assurance and the ability to

confirm if needed that the certifying official has the authority to certify that the data submitted is accurate and truthful.

*E. Disclosure of Data Collected on Form 477*

78. NTIA's SBI deployment data are available to the public and have proved to be a valuable resource to academic researchers and federal and state government agencies. While we make no changes to our current treatment of subscription data, we expect that increased public access to disaggregated subscription data could provide similar benefits. The Commission already makes provider-specific subscription data available to state commissions that are able to maintain their confidentiality and to other federal agencies upon request, pursuant to confidentiality conditions. We believe that greater access to the subscription data might be feasible, and beneficial, without compromising competitively sensitive information. Accordingly, we delegate authority to the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to explore ways to allow greater public access to Form 477 subscription data, and to increase access to such data if the Bureaus determine, after seeking public comment, that this can be accomplished in a manner that addresses concerns about the competitive sensitivity of the data and precludes public disclosure of any confidential information.

79. *Subscription Data.* In the *NPRM,* the Commission sought comment on how best to provide stakeholders with useful data while protecting filers' legitimate confidentiality interests. Specifically, the Commission asked whether it should retain the simple check-box on Form 477 that filers can use to request confidential treatment for data submitted on that form, or whether there are classes of information that should always be considered public. The first page of Form 477 includes a check box that allows providers to request nondisclosure of all or portions of their submitted data without filing at this point in the process the detailed confidentiality justification required by section 0.459 of our rules. If the Commission receives a request for, or proposes disclosure of, the information contained in Form 477, the provider will be notified and required to make the full showing under section 0.459 of our rules. Based on the record before us, we retain our existing procedures with respect to subscription data. We thus will continue to allow filers to request confidential treatment of their reported subscription data by checking a box on Form 477. At the same time, we recognize that there may be benefits to increasing public access to Form 477 subscription data, and some commenters argue that the public should have access to this information. For now, we find that our current approach appropriately balances the filers' disclosure concerns with the public need for access to this information.

80. While we do not expand public access to Form 477 subscription data at this time, we delegate authority to the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to explore ways to allow greater public access to Form 477 subscription data, and to increase public access to such data if this can be accomplished in a manner that addresses concerns about the competitive sensitivity of the data. In particular, in the *NPRM,* the Commission asked whether the Commission should allow researchers to review disaggregated Form 477 data, consistent with the recommendations of the National Broadband Plan. We direct the Bureaus to develop a plan to enable such access. The Bureaus should propose a definition of ''researcher,'' identify reasonable terms and conditions of access, and define a standard to ensure that sensitive data are not revealed through disclosure by such researchers. The *NPRM* also sought comment on whether ''the passage of time diminish[es] the commercial sensitivity of certain types of data.'' We direct the Bureaus to develop a process or standard under which the Commission could make disaggregated Form 477 subscription data available to the public after the passage of a certain period of time (three years, for example), and under what terms or conditions, if any, the data should be disclosed. For example, the Bureau should consider whether historical data should be available only pursuant to protective order, or whether other restrictions on use or publication would be appropriate. If the Bureaus identify ways to increase public access to subscription data while addressing concerns about the competitive sensitivity of the data, we direct the Bureaus to increase public access accordingly.

81. *Deployment Data.* We are collecting deployment data for the first time and thus must make a determination regarding the confidential treatment of such data. Some commenters argue that this information should be available to the general public. Other commenters make general arguments that all data collected by Form 477 should be given confidential treatment. We believe that deployment data should be made public to at least the same extent as NTIA has been making them public via the National Broadband Map. Unlike subscription data, which may be sensitive vis-à-vis competitors and of relatively low value to the general public, deployment data are very useful to the public, particularly to potential customers that wish to understand and compare their service options. Indeed, many providers make such data available to the public on their Web sites.

82. We find that dissemination of deployment data promotes a more informed, efficient market. By allowing public release of as much of the information as possible, associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific market problems and eliminating those regulations that have outlived their usefulness. Finally, making these data available to the public provides consumers, states, and experts the opportunity to review the data to ensure the accuracy of the information. However, we note that mobile deployment data will include certain specific spectrum and speed parameters that may be used by providers for internal network planning purposes. Filers may request confidential treatment of those specific elements of their deployment data on Form 477. We plan, however, to make the mobile coverage areas by technology and by an aggregated range of speeds available to the public.

83. All other deployment data will be treated as public data. While filers are not precluded from seeking confidential treatment pursuant to the Commission's rules for the deployment data they file, the streamlined check-box option will not apply to the deployment data collected on Form 477. Thus, consistent with our rules, filers seeking confidential treatment of deployment data must submit a request that the data be treated as confidential with the submission of their Form 477 filing, along with their reasons for withholding the information from the public.

84. *Company Identification Information.* Some commenters argue that all data collected by Form 477 should be given confidential treatment. In this instance, the type of company identification information collected on Form 477 is not competitively sensitive information of the type that the Commission has in the past treated as confidential. Accordingly, we will not

limit disclosure of company identification information by allowing filers to check a box on Form 477 requesting confidential treatment of that information. While filers are not precluded from seeking confidential treatment of company identification information pursuant to the Commission's rules, there will be no streamlined check-box option. Filers seeking confidential treatment of company identification information must therefore submit a request that the information be treated as confidential with the submission of their Form 477 filing, along with their reasons for withholding the information from the public.

85. *Emergency Contact Information.* As noted above, we will now collect the name, phone number, and email address of each Form 477 filer's emergency operations contact. The Commission needs this information to promptly contact providers' network operating centers during emergencies. We agree with commenters that this information is confidential. Accordingly, for the reasons set forth below, we find that these emergency operations contact data are information that should not be routinely available for public inspection. Form 477 is filed securely through an online password protected system. Providers submitting this information on Form 477 will not be required to submit a request for nondisclosure of the emergency operations contact information. Requests for inspection of this information must include a persuasive showing as to the reasons for inspection of the data. When considering such requests, the Commission will weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in the light of the facts of the particular case. We will provide notice to relevant filers of requests to review this information pursuant to the Commission's FOIA rules.

86. We find that emergency operations contact information is confidential and subject to Freedom of Information Act (FOIA) Exemption 4, which protects ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' In circumstances in which commercial information is required to be submitted to the government, FOIA Exemption 4 permits us to withhold such records where release would likely cause substantial harm to the competitive position of the submitting party. Communications providers do not make information about how to contact their network operations centers available to the public. Instead, they provide contact information to the public that will not disrupt their network operations. The release of this commercial information to the public would likely result in direct commercial and financial harm to the providers' business operations. Public disclosure of this information could present an unacceptable risk of disrupting communications providers' operations, including repair operations during communications outages or other emergencies. Network operations centers could be flooded with calls during emergencies when the staff at those centers should be focused on providing or restoring communications services. Interference with a communications provider's work to ensure the continued, robust operation of its communications services would clearly result in commercial harm to business operations.

87. Under FOIA Exemption 4, we are also obliged to consider any adverse impact that disclosure might have on government programs, including the impact on the Commission's ability to implement its statutory responsibility under section 1 of the Act to ensure that communications services are adequate to promote ''safety of life and property.'' Public disclosure of this information would likely result in increased call volume to providers' network operations centers. This could result in potential harm to public safety by interfering with communications providers' network operations and ability to provide communications service. Further, the Commission and other government agencies might be unable to contact network operations centers when needed, adversely impacting their ability to fulfill statutory and other obligations to ensure adequate communications services. Finally, access to providers' emergency operations contact information will not advance the public's interest in learning of Commission actions and communications service providers publicize contact information that does not interfere with their operations. Accordingly, we conclude that this information is sensitive data entitled to confidential treatment and should be exempt from routine public disclosure under FOIA.

## IV. Legal Authority

88. The *NPRM* set out several sources of legal authority that support the proposals to collect additional data, stated that the Commission believed that its authority was sufficient, and sought comment on that conclusion. To the extent that commenters questioned the Commission's authority to collect the types of data required under this Order, we have addressed those comments above. Our authority to adopt this Order and the accompanying rules lies in sections 4(i), 201, 214, 218–220, 251–252, 254, 303(r), 310, 332, and 403 of the Communications Act of 1934, as amended (the Act), as well as section 706 of the Telecommunications Act of 1996. As discussed elsewhere in this Order, for example, these data are important inputs into the annual Broadband Progress Reports required by section 706. Deployment and subscription data are also critical for the Commission to fulfill its responsibilities under section 254, including the requirement that its universal service policies ensure that consumers in all regions ''have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas,'' and is critical to measuring whether we are meeting those responsibilities. As discussed above, we also need deployment and subscription data to further public safety goals. With respect to mobile broadband deployment and subscription data, we also note that such data will help the Commission to carry out its spectrum management related responsibilities under Title III of the Act. To the extent that the Form 477 data collection applies to interconnected VoIP providers, and to the extent that interconnected VoIP services are not telecommunications services, we have both direct authority, as well as ancillary authority, to require the submission of these data based on the necessity of collecting such information in order for the Commission to be able to carry out its statutory obligations with regard to carriers.

## V. Procedural Matters

### *A. Paperwork Reduction Act Analysis*

89. This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new and modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C.

3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

90. In this present document, we have assessed the effects of revising Form 477 to collect additional subscription data on fixed voice and interconnected VoIP services; deployment data on voice and broadband services; and company identification and contact information, and find that these collections must be collected from all providers, including small business providers, to be effective in helping the Commission meet its statutory requirements.

*B. Final Regulatory Flexibility Analysis*

91. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for this Report and Order, of the possible significant economic impact on a substantial number of small entities by the policies and rules addressed in this document. The FRFA is attached to this item as Appendix C. The Commission will send a copy of this item, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

*C. Congressional Review Act*

92. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**VI. Final Regulatory Flexibility Analysis**

93. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *2011 Data Gathering Notice.* The Commission sought written public comment on the proposals in the *2011 Data Gathering Notice,* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*A. Need for, and Objectives of, the Report and Order*

94. In this Report and Order (Order), the Commission modifies the FCC Form 477 data collection to streamline the collection and improve the quality of the data collected. Form 477 is the Commission's primary tool for collecting data about broadband and local telephone networks and services. The revisions to the form adopted today will expand and refine the data available to the Commission to fulfill its statutory duties.

95. For the last three years, data on broadband deployment have been collected by the National Telecommunications and Information Administration (NTIA) to populate the National Broadband Map. But NTIA's collection program is nearing its completion. NTIA's State Broadband Initiative (SBI) collection of deployment data is scheduled to expire in 2014; given the critical role such data play in meeting the goals of Congress and the Commission, it is the Commission's responsibility to ensure that no gap exists in the collection of these data. In today's Order, the Commission assumes the responsibility for collection of broadband deployment data, with some modifications to streamline and reduce the burdens on providers while making other modest improvements. With regard to subscription data, the Commission takes measures to reduce burdens while improving the quality of the data it collects. To enhance its ability to meet public safety needs and obligations, the Commission will collect emergency contact information from providers. Finally, the Commission requires filers to report certain company identification information, which will facilitate transaction reviews, as well as ongoing vigilance against waste, fraud, and abuse of universal service funding.

96. Data about broadband and voice deployment and subscription are essential to the Commission's ability to fulfill its statutory obligations and play a vital public interest role for other state, local, and federal agencies, researchers, and consumers. Data collected through Form 477 and NTIA's SBI program play an essential role in the Commission's work: the Commission uses these data to meet its statutory obligation to assess annually the state of broadband availability, update its universal service policies and monitor whether its statutory universal service goals are being achieved, and meet its public safety obligations. The Commission also makes the data available to states, researchers, and the public to inform their own activities and decisions regarding voice and broadband networks and services.

97. Many of these obligations flow directly from statute. Significantly, the Broadband Data Improvement Act (BDIA) requires that the Commission conduct an annual inquiry concerning the ''availability of advanced telecommunications capability to all Americans.'' As part of this inquiry, the Commission must ''determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.'' If the Commission's conclusion is negative, it must ''take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.'' The Commission has observed that the data collected on Form 477 to date have been imperfect for the purpose of assessing broadband deployment and availability, as subscription data are a highly imperfect proxy for network deployment.

98. Deployment and subscription data are also needed to fulfill the Commission's universal service mandate. The Communications Act of 1934, as amended, requires the Commission to base its universal service policies on a number of principles, including that ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas.'' The Commission currently relies on SBI data for a number of universal service policies. For example, the Commission has relied on the SBI data to determine areas eligible for support in Connect America Phase I, and has stated that it will rely on SBI data for determining areas eligible for support in Connect America Phase II. In addition, the Commission has sought comment on using SBI data to determine areas eligible for the Remote Areas Fund. Over time, the Commission's reliance on the SBI data to support its universal service policies will transition to reliance on data collected on Form 477. Thus, the data collected in Form 477 are critical to measuring whether we are meeting our universal service mandate.

99. Accurate, detailed data about deployment and subscription also help further the Commission's public safety goals. In disaster situations, for example, the Commission uses these data to identify service providers likely to be affected and alternative sources of critical communications. The collection of deployment and subscription data help the Commission monitor the performance of both legacy circuit-switched networks and broadband networks, to ensure that consumers can access emergency services as service providers transition from one technology to the other.

100. Moreover, in addition to the Commission's use of the data, there have been tremendous public interest benefits to other federal and state

agencies and the general public from the FCC's and NTIA's data collections. Use of the National Broadband Map application, and access to the data via download or Application Programming Interfaces, has been extensive.

101. As discussed below, we will now collect fixed and mobile broadband deployment data. Combining network deployment information with service availability data, as well as subscription information, will assist the Commission in a number of analyses, including the annual broadband progress report, the Annual Mobile Wireless Competition Report, the state of competition in the mobile wireless industry, and review of mergers and spectrum transactions. The mobile broadband deployment data, in conjunction with similar data on mobile voice deployment, will enable the Commission to analyze the extent of deployment in different spectrum bands, and technologies. These data will enable us to analyze deployment in different spectrum bands, and to structure our spectrum, infrastructure, and competition polices effectively and efficiently in a rapidly evolving mobile marketplace. The National Broadband Plan states that mobile broadband is poised to become a key platform for innovation in the United States over the next decade. For mobile service deployment, spectrum is an essential input as the transmission pipe. Understanding how spectrum bands and technologies have actually been deployed in different areas will greatly facilitate the formulation of sound and informed spectrum policies, including how best to make additional spectrum available for licensed, unlicensed and opportunistic uses. The mobile broadband deployment data, indicating speed, technology, and spectrum band used, will enable us to better assess the wireless marketplace to ensure that our spectrum and competition policies accommodate growing demand and evolving technologies in the provision of mobile broadband services.

102. With respect to mobile broadband, the Commission continues NTIA's SBI collection, with certain modifications to reduce burdens while improving the data to fulfill our statutory purposes and policy goals. These modifications include additional technology codes, separation of coverage areas by unique combinations of technology, spectrum and speed, and minimum, rather than maximum, advertised speed. Specifically, for each mobile broadband network technology (e.g., EV–DO, WCDMA, HSPA+, LTE, WiMAX) deployed in each frequency band (e.g., 700 MHz, Cellular, AWS, PCS, BRS/EBS), facilities-based mobile broadband providers should submit polygons representing the nationwide coverage area (including U.S. territories) of that technology. Collecting these deployment data on mobile broadband network technologies, in conjunction with data on spectrum and minimum advertised speeds, will improve the data needed to fulfill the Commission's statutory purposes and policy goals. As with fixed broadband deployment data, we direct filers to report data on advertised speeds and reduce the burden of associating these speeds with predetermined speed tiers. To reduce burdens, we also allow mobile broadband providers to submit coverage maps on a nationwide rather than state-by-state basis.

103. Subscription information enables the Commission to fulfill its statutory and regulatory duties. For the past thirteen years, the collection of subscription data via Form 477 has served as the Commission's principal tool for monitoring telephone and broadband subscriptions and competition. Form 477 subscription data also enable the Commission to evaluate barriers to adoption, administer and reform the universal service program, monitor the PSTN-to-IP conversion by providing insight into how many customers rely on each type of network technology in each area, and better assess which services are purchased independently or in combination with other services. These data also support the Commission's efforts to ensure public safety by providing a measure of what networks and providers customers rely on in each area.

104. The Commission will now collect the number of total and residential fixed voice and interconnected VoIP subscriptions by census tract, much like it currently does for fixed broadband subscription data. The Commission will no longer require providers of these services to submit the list of ZIP codes in which they provide service to end-user customers.

105. Collecting fixed voice and interconnected VoIP subscription data by census tract will improve the Commission's ability to measure and conduct analyses of retail voice competition. The Commission currently collect fixed broadband subscription data by census tract, and consumers often purchase fixed broadband and voice services together. Collecting fixed voice and interconnected VoIP subscription data at the same geographic level as fixed broadband data will allow the calculation of retail market shares for voice services by census tract in most census tracts, and will give the Commission a better understanding of competition in the remainder.

106. The Commission requires additional company identification information for several reasons. The Commission currently allows Form 477 filers to consolidate data for multiple operations within a state on a single submission, and filers are permitted to determine the organizational level at which they submit their filings. A parent or holding company may file on behalf of its subsidiaries or the subsidiaries may file their own Form 477. Accordingly, the Commission will now require filers to report, in each 477 filing, the company's Universal Service Administrative Company (USAC) study area codes, USAC 499 identification numbers, and Web site address. This information enables the Commission to aggregate, compare, and analyze, by a common provider, the various data it collects through different forms and filing requirements.

107. The Commission will also require that filers report the name, phone number, and email address of their emergency operations contact. The information currently collected by Form 477 is not sufficient for use in promptly contacting providers' network operating centers during emergencies. Some commenters support the collection of additional emergency contact information. For example, Qwest states that this information should be collected, since ''[e]mergency contact information could be added to Form 477 without placing any material burden on the service providers.'' However, other commenters argue that Form 477 is not the appropriate vehicle for the Commission to collect this contact information.

108. The Commission needs this emergency operations contact information to fulfill its statutory public safety mandates. The Commission must be able to directly contact individuals who can provide information on network status during natural disasters or other emergencies. As a mandatory, recurring filing by providers of telephone and broadband service, Form 477 will be a particularly effective vehicle for collecting emergency contact data that are comprehensive and current, with a relatively small burden on filers. The Commission currently has no structured, recurring, mandatory collection of contact information in place specifically for use in emergencies affecting telephone and/or broadband networks. The Commission's Disaster Information Reporting System (DIRS) does collect contact information, but only on a voluntary basis for use during large-scale disasters. It is important for

the Commission to have contact information from all providers that file Form 477, including those providers that do not choose to participate in DIRS, and that this information is updated consistently.

109. Finally, filers of Form 477 will be required to report the name, title, and contact information of their certifying official. This essential information provides assurance and the ability to confirm if needed that the certifying official has the authority to certify that the data submitted is accurate and truthful.

*B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

110. In this section, we respond to comments filed in response to the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Report and Order.

111. OPASTCO, NTCA, and WTA assert that the Commission should narrow its efforts and collect only that information for which it has a legitimate statutory or regulatory need. In addition, they comment that, to the extent that other avenues for gathering information exist, the Commission should use those avenues in order to eliminate duplicative filing requirements for service providers. OPASTCO *et al.* also comment that the Commission must remain mindful of the burdens new requirements could impose on small providers like rural LECs, and that specifically, detailed new reporting requirements could prove difficult for small providers that manually maintain physical plant records, instead of using sophisticated computerized systems.

112. The Commission takes steps in the Order to protect against duplication in the Form 477 collection and reduce the burden on filers by narrowly tailoring the collection of data to those most useful to the Commission. The Commission found in the Order that the collection of deployment and subscription data was necessary to fulfill a number of the Commission's statutory and policy goals, including its statutory obligation to assess annually the state of broadband availability, update its universal service policies and monitor whether its statutory universal service goals are being achieved, and meet its public safety obligations. In addition, in the Order, the Commission directed the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to identify any circumstances in which the collection of company identification information on Form 477 may duplicate another Commission collection, and to exempt filers from the latter in those instances.

113. The Commission also considered whether data available from outside sources, including providers' Web sites, is sufficient to inform the Commission about the expansion of broadband networks. The Commission found, however, that reliance on third-party data is not appropriate for a primary source of deployment data.

114. Finally, with its new collection of deployment data, the requirements in the Order are designed to reduce filing burdens and increase reliability of the data in several ways. For example, the changes to the SBI collection are designed to reduce filing burdens and increase reliability of the data. The collection will occur in a single, unified process rather than on a state-by-state basis. A single, nationwide filing (that includes both deployment and subscription data) will help eliminate potential variations among states, and reduce to one the number of entities with which a multistate provider must coordinate for its filing. In addition, the elimination of speed tiers will reduce burdens associated with categorizing data into those tiers. The data will also be more reliable because all providers must file, and must certify to the accuracy upon filing. The Commission also declined to gather fixed broadband deployment data at a level more granular than the census block, finding that the added complexity and burden are unlikely at this time to provide a significant insight into how many residences and businesses lack access to service. In short, the collection is carefully tailored to provide the Commission the data it needs to fulfill its mission, while taking steps to minimize the burden on filers. As a result, the Commission expects that communications providers' overall reporting burden will decrease even though the Commission will be collecting more data.

115. Further, the Commission noted that the Wireline Competition Bureau will release a draft data specification that reflects the changes necessary to implement this Order. As they have with every previous revision of Form 477, Wireline Competition Bureau staff will work with providers to ensure that the providers have the tools they need to complete and file the form in the least burdensome manner possible. The Commission delegated authority to the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to implement any technical improvements or other clarifications to the filing mechanism and forms that will make compliance easier for filers.

116. AT&T argued that the proposed pricing collection from broadband providers would impose significant and unnecessary burdens on broadband providers in violation of the Regulatory Flexibility Act. The Commission does not require the filing of pricing data in the Order.

*C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

117. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

1. Wireline Providers

118. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service

providers can be considered small providers.

119. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

120. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

121. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

122. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

123. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

124. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

125. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size

standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

126. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860.000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

2. Wireless Carriers and Service Providers

127. Since 2007, the Census Bureau has placed wireless firms under the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007 show there were 1,383 firms that operated in this category during that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees, based on the Census data.

128. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) that deems a wireless business to be small if it has 1,500 or fewer employees. We applied this standard to Commission data to develop another estimate of the number of wireless providers that are small. According to the Commission estimates based on FCC Form 499–A data, there were 970 wireless service providers in 2007. Of those, an estimated 815 had 1,500 or fewer employees, and 155 had more than 1,500 employees. In addition, 413 of the 970 providers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of those, an estimated 261 had 1,500 or fewer employees, and 152 had more than 1,500 employees. Thus, using the available Form 499–A and Census data, we estimate that the majority of wireless firms can be considered small.

129. In addition, the Commission has defined companies as ''small businesses'' and ''very small businesses'' when auctioning spectrum licenses, for purposes of determining eligibility for bidding credits, and the SBA has approved these definitions. For example, in the Wireless Communications Service (WCS), 700 MHz Guard Band, and 39 GHz spectrum auctions, the Commission defined a ''small business'' as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. In the 800 MHz/900 MHz, 220 MHz, and 24 GHz spectrum auctions, the Commission defined a ''small business'' as an entity that had revenues of no more than $15 million in each of the three previous calendar years and a ''very small business'' as an entity that had revenues of no more than $3 million in each of the three previous calendar years. However, the number of winning bidders that qualify as small businesses at the close of an auction is generally not an accurate representation of the number of small wireless providers potentially subject to Form 477. Reasons for this include: Winning bidders may not offer service or may not offer a service subject to Form 477, winning bidders' revenues may increase after an auction, and winning bidders may transfer their licenses to another entity. The Commission does not typically track the revenues of spectrum licensees subsequent to an auction, unless unjust enrichment issues are implicated in the context of spectrum license assignments or transfers.

3. Satellite Service Providers

130. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

131. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

132. The second category, i.e. ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over

Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

4. Cable and OVS Operators

133. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

134. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

135. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

136. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

137. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

5. Internet Service Providers, Web Portals and Other Information Services

138. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services.

139. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband.

140. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees. For the second category, the data show that 1,682 firms operated for the entire year. Of those, 1,675 had annual receipts below $25 million per year, and an additional two had receipts of between $25 million and $49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

141. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users. The SBA has developed a small business size standard for this category; that size standard is 500 employees. Less than 500 employees is considered small. According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with 500 to 999 employees. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

142. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 6,726 had annual receipts of under $25 million, and 155 had receipts between $25 million and $49,999,999 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

143. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

144. In today's Order, the Commission modifies the FCC Form 477 data collection to streamline the collection and improve the quality of the data collected. These revisions impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities.

145. *Deployment.* To ensure continuity with the National Broadband Map, the Commission will collect network deployment data for fixed and mobile broadband as well as mobile voice network deployment data. The Order requires each facilities-based provider of fixed broadband service to provide a list of all census blocks in which it makes broadband service available to end users. Facilities-based providers of fixed broadband service will also be required to report the maximum speed offered in each census block where they offer service, breaking out reporting for residential and nonresidential services where appropriate, and by technology. With respect to mobile broadband, for each mobile broadband network technology (e.g., EV–DO, WCDMA, HSPA+, LTE, WiMAX) deployed in each frequency band (e.g., 700 MHz, Cellular, AWS, PCS, BRS/EBS), facilities-based mobile broadband providers should submit polygons representing the nationwide coverage area (including U.S. territories) of that technology. Facilities-based mobile wireless voice providers must submit geospatial data of their coverage area boundaries. For both fixed and mobile broadband deployment data, filers must report data on advertised speeds; to reduce the burden on filers, the Commission eliminates predetermined speed tiers. Also to reduce burdens, the Commission allows mobile service providers to submit coverage maps on a nationwide rather than state-by-state basis.

146. *Subscription.* To improve the quality of the subscription data the Commission collects, the Order requires providers of fixed voice and interconnected VoIP services to file subscription data by census tract, as is currently required for fixed broadband subscription data, rather than the current process of requiring such providers to submit the list of ZIP codes in which they provide service to end-user customers. The Order also eliminates the use of speed tiers for broadband subscription data, and requires filers to provide the number of broadband connections by the advertised speeds associated with each product subscribed to in the relevant geographic area. Fixed providers will report connections by the maximum advertised upload and download speeds in each census tract, while mobile providers will report connections by minimum advertised upload and download speeds in each state.

147. The Order eliminates questions and requirements on the current Form 477 that require certain broadband providers to report information about the availability of broadband service, as opposed to information about actual subscribership to broadband service. These questions are no longer necessary in light of the new Form 477 collection of broadband deployment data, discussed above. Specifically, the Order eliminates Part I.B of the current form, which requires, by state: (1) Each incumbent LEC with any DSL connections in service to report its best estimate of the percentage of residential end user premises in its service area to which its DSL connections could be provided using installed distribution facilities, (2) each cable system with any cable modem connections in service to report its best estimate of the percentage of residential end user premises in its

service area to which its cable modem connections could be provided using installed distribution facilities, and (3) each network operator serving any terrestrial mobile wireless broadband subscribers to report the total number of subscribers (*i.e.,* including broadband, broadband plus voice, and voice-only subscribers) whose mobile device is capable of sending or receiving data at information transfer rates exceeding 200 kbps in at least one direction. In addition, the Order eliminates the requirement that fixed broadband providers submit data for every census tract within their ''defined service territory'' regardless of the number of subscribers in the tract. By eliminating these questions, the Commission protects against duplication in its collection and reduces the burden on filers by narrowly tailoring its collection of data to those most useful to the Commission.

148. In addition, the Commission eliminates the requirement that broadband providers submit state-level data on the percentage of their connections that are billed to end users and the percentage that are equipped over their own facilities. The Commission typically does not rely on these metrics at this level for competitive analysis, nor has it reported them in its semiannual *Internet Access Services* reports. Eliminating them will greatly simplify the revised Form 477 and its data collection interface, and will reduce burden for filers.

149. The Commission also modifies its current data collection in several ways to eliminate unnecessary information and produce data better suited to competitive analysis. The Commission removes the requirement that providers of local exchange telephone service report the number of lines provided to unaffiliated communications carriers as UNE-Platform (UNE–P). The Commission also eliminates reporting of the percentage of end-user lines provided over UNE–P. In addition, providers of interconnected VoIP service will no longer be required to report the number of companies purchasing their VoIP components or service for resale. The Commission typically does not rely on this metric at this level for competitive analysis. The Commission also simplifies the categories of information interconnected VoIP providers must provide. Currently, the Form requires filers to report the percentage of VoIP subscriptions with nomadic functionality. The Order finds the burdens of this reporting distinction do not outweigh the benefits and so eliminates the nomadic category. Finally, the Commission requires local exchange telephone service providers to report, by state, how many of their access lines are bundled with broadband. This information about bundling can be evidence of consumers' willingness to switch voice service providers, and hence improves the Commission's competitive analysis.

150. *Company Identification and Contact Information.* To enhance the Commission's ability to meet public safety needs and obligations, the Order requires entities filing Form 477 to provide additional company identification and contact information. In addition to the current Form 477 requirements, the Commission will require filers to report the company's Universal Service Administrative Company (USAC) study area codes, USAC 499 identification numbers, and Web site address. The Order also requires that filers report the title of their certifying official and the name, phone number, and email address of their emergency operations contact. This information will assist the Commission in fulfilling its universal service mandate, evaluating merger, forbearance, and other applications, and protecting public safety. The information currently collected by Form 477 is not sufficient for use in promptly contacting providers' network operating centers during emergencies.

### *E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

151. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

152. The Commission needs access to data that are comprehensive, reliable, sufficiently disaggregated, and reported in a standardized manner. The Order recognizes, however, that reporting obligations impose burdens on the reporting providers. Consequently, the Commission limits its collection to information that is narrowly tailored to meet its needs.

153. *Deployment.* With regard to the collection of deployment data, the changes to the SBI collection adopted in the Order are designed to reduce filing burdens and increase reliability of the data in several ways. The collection will occur in a single, unified process rather than on a state-by-state basis. A single, nationwide filing (that includes both deployment and subscription data) will help eliminate potential variations among states, and reduce to one the number of entities with which a multistate provider must coordinate for its filing. In addition, the elimination of speed tiers will reduce burdens associated with categorizing data into those tiers. The data will also be more reliable because all providers must file, and must certify to the accuracy upon filing. The Commission also declined to gather fixed broadband deployment data at a level more granular than the census block, finding that the added complexity and burden are unlikely at this time to provide a significant insight into how many residences and businesses lack access to service. In short, the collection is carefully tailored to provide the Commission the data it needs to fulfill its mission, while taking steps to minimize the burden on filers. As a result, the Commission expects that communications providers' overall reporting burden will decrease even though the Commission will be collecting more data.

154. The Commission considered whether data available from outside sources, including providers' Web sites, are sufficient to inform the Commission about the expansion of broadband networks. The Commission found, however, that reliance on third-party data is not appropriate for a primary source of deployment data. Among the problems the Commission faces in using commercial data are restrictions on reuse and publication of the data on which the Commission would rely. In addition, the Commission found in the *2012 Eighth Broadband Progress Report* that while Mosaik data provide a useful tool for measuring developments in mobile broadband deployment, they may overstate the extent of mobile broadband coverage. Furthermore, because Mosaik reports advertised coverage as reported to it by mobile wireless providers, each of which may use a different standard for determining coverage, the Mosaik data are not consistent across geographic areas and service providers. Finally, tracking down deployment information on providers' Web sites would not provide consistent data for analysis, would be time consuming, and might not be comprehensive. The information on providers' Web sites is not certified and

is generally not available in a format consistent enough to provide the level of geographic granularity the Commission requires.

155. In the Order, the Commission recognizes that submitting any information imposes burdens, which may be most keenly felt by small providers, but concludes that the benefits of having comprehensive data substantially outweigh the burdens. One of the primary objectives of Form 477 is to inform the Commission's efforts to encourage broadband deployment on a reasonable and timely basis to *all* Americans. The Commission concluded it that would miss important data relevant to this objective if it were to exempt small providers, which are likely to serve rural or insular areas of the United States, where barriers to deployment are typically the highest. Additionally, obtaining this information from small and rural providers helps ensure that Connect America Fund support is indeed increasing broadband deployment and will help the Commission keep its universal service policies appropriately tailored over time. At the same time, the Commission is cognizant of the burdens of data collections, and has therefore taken steps to minimize burdens, including by making the deployment collection consistent, to a large extent, with NTIA's SBI data collection. For all of these reasons, the Commission concluded that the benefits of collecting deployment data outweigh the burdens on small providers that may be associated with collection of these data.

156. The Commission specifically considered at what geographic level to require reporting from small providers. The Commission found that reporting by census block will not be unduly burdensome for the majority of fixed broadband service providers, as many of these providers already voluntarily report deployment data by census block to NTIA's SBI program. Fixed broadband providers have, since June 2010, submitted the characteristics of their broadband deployment by census block to state mapping designees.

157. The Commission also considered whether to gather fixed broadband deployment data at a level more granular that the census block. The Commission declined to do so at this time because the added complexity and burden are unlikely to provide a significant insight into how many residences and businesses lack access to service. The Commission found that many providers do not maintain broadband network deployment data on an address-by-address basis. Also, rural areas where networks are deployed may not have ''street'' addresses assigned. The Commission was not persuaded that the benefits of requiring address-level data would outweigh the overall increase in the filing burden. The Commission concluded that requiring providers to report fixed broadband deployment data by census block appropriately balances the burdens of reporting this information to the Commission with the level of granularity required to carry out our statutory duties.

158. The Commission also found that burdens on mobile wireless providers associated with providing digital representations of and geospatial data on their network coverage areas are not significant, and are outweighed by the public interest benefits associated with our collection. The geospatial data the Commission is collecting on spectrum and technology are used by mobile service providers for radio frequency (RF) network design and are an integral part of every mobile service provider's ordinary course of business. Accordingly, mobile deployment data by spectrum bands and network technology should be readily available to mobile service providers given that any mobile network deployment plan would include both the spectrum and the network technology to be used for such deployment.

159. In addition, many providers develop and maintain such data in order to publish maps of their coverage areas on their Web sites and in other promotional materials, and certain operators have provided network coverage boundaries to Mosaik. Certain providers also have submitted coverage area boundaries to the Commission as part of wireless transaction proceedings, and many providers have submitted coverage area boundaries in the SBI data collection. There are multiple GIS (Geographical Information Systems) platforms capable of creating and managing geospatial data on mobile network coverage areas, and there are many GIS specialists and engineering consultants in the United States who are able to provide expertise and develop such data for providers that do not have internal GIS resources.

160. Finally, the Commission also considered whether the collection of fixed voice network deployment data is warranted. It concluded that collecting additional fixed voice network deployment data on Form 477 would be largely redundant and would impose an additional burden on voice providers. Therefore, the Commission declined to require providers of fixed voice services to report deployment data on Form 477.

161. *Subscription.* While the Commission believes that more granular subscription data would be preferable, it declines to collect more granular subscription data at this time to ensure that any burdens are minimized before initiating any additional collections. Accordingly, the Commission directs the Wireline Competition Bureau to test technical improvements to the Form 477 filing mechanism that might reduce the burden of filing more detailed subscription data. If, after analyzing such tests, the Bureau determines there is a means of minimizing burdens with a more detailed approach, the Commission will revisit whether to initiate such collection.

162. The Commission also eliminates the requirement that providers submit broadband data in predetermined speed tiers, and instead will require providers of broadband services, for both subscription and deployment data, simply to provide advertised speeds—the maximum advertised speed in each census block for fixed broadband, and the minimum advertised speed in each coverage area for mobile broadband. Streamlining the collection in this manner will give the Commission greater flexibility to group and analyze broadband speed data in useful ways. Eliminating speed tiers will permit the Commission to conduct a consistent analysis of subscription and deployment data and, because they will no longer be required to categorize the number of connections into existing speed tiers, will reduce burdens on filers.

163. *Company Identification Information.* In the Order, the Commission recognizes that it currently collects some company identification information in other contexts. Although these collections do not duplicate the information collection adopted in the Order—they apply to small subsets of the universe of Form 477 filers and do not request the same level of detail—the Commission nonetheless takes precautions to ensure that no entity is burdened with duplicative filings. Accordingly, the Commission directed the Wireline Competition Bureau, in consultation with the Wireless Telecommunications Bureau, to identify any circumstances in which the collection of company identification information on Form 477 may duplicate another Commission collection, and to exempt filers from the latter in those instances.

*F. Report to Congress*

164. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review

Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

### VII. Ordering Clauses

165. Accordingly, *it is ordered* that, pursuant to sections 4(i), 201, 214, 218–220, 251–252, 254, 303(r), 310, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 214, 218–220, 251–252, 254, 303(r), 310, 332, and 403, 409, 502, and 503, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, this Report and Order *is adopted.*

166. *It is further ordered* that Parts 0, 1 and 43 of the Commission's rules *are amended* as set forth in Rules Appendix A.

167. *It is further ordered* that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this Report and Order *shall be effective* September 12, 2013, except for the amendments to sections 1.7001, 1.7002, 43.01 and 43.11 of the Commission's rules, which contain information collection requirements that have not been approved by the Office of Management and Budget and will become effective upon announcement in the **Federal Register** of Office of Management and Budget approval and an effective date of the rules.

168. *It is further ordered* that the Commission *shall send* a copy of this Report and Order to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

169. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Parts 0, 1 and 43

Broadband, Communications, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, and 43 as follows:

## PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.91 to revise paragraph (f) to read as follows:

**§ 0.91 Functions of the Bureau.**

* * * * *

(f) Develop and administer recordkeeping and reporting requirements for telecommunications carriers, providers of interconnected VoIP service (as that term is defined in § 9.3 of this chapter), and providers of broadband services.

* * * * *

■ 3. Amend § 0.457 to add paragraph (d)(1)(viii) to read as follows:

**§ 0.457 Records not routinely available for public inspection.**

* * * * *

(d) * * *

(1) * * *

(viii) Emergency contact information reported on FCC Form 477.

* * * * *

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

■ 5. Amend § 1.7001 by removing paragraph (a)(2), redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), revising newly redesignated paragraph (a)(2), and revising paragraphs (b), (c) and (d) to read as follows:

**§ 1.7001 Scope and content of filed reports.**

(a) * * *

(2) *One-way broadband lines or wireless channels.* Lines or wireless channels with information carrying capability in excess of 200 kilobits per second in at least one direction, but not both.

* * * * *

(b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. 153 (1)), cable television companies, terrestrial fixed wireless providers, terrestrial mobile wireless providers, satellite providers, utilities, and others, that are facilities-based providers shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477.

(c) Respondents identified in paragraph (b) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477) and shall report the title of their certifying official.

(d) Disclosure of data contained in FCC Form 477 will be addressed as follows:

(1) Emergency operations contact information contained in FCC Form 477 are information that should not be routinely available for public inspection pursuant to § 0.457 of this chapter.

(2) Respondents may make requests for Commission non-disclosure of the following data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted:

(i) Provider-specific subscription data and

(ii) Provider-specific mobile deployment data that includes specific spectrum and speed parameters that may be used by providers for internal network planning purposes.

(3) Respondents seeking confidential treatment of any other data contained in FCC Form 477 must submit a request that the data be treated as confidential with the submission of their Form 477 filing, along with their reasons for withholding the information from the public, pursuant to § 0.459 of this chapter.

(4) The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to:

(i) A state commission provided that the state commission has protections in place that would preclude disclosure of any confidential information,

(ii) ''Eligible entities,'' as those entities are defined in the Broadband Data Improvement Act, in an aggregated format and pursuant to confidentiality conditions prescribed by the Commission, and

(iii) Others, to the extent that access to such data can be accomplished in a manner that addresses concerns about the competitive sensitivity of the data and precludes public disclosure of any confidential information.

* * * * *

■ 6. Revise § 1.7002 to read as follows:

**§ 1.7002 Frequency of reports.**

Entities subject to the provisions of § 1.7001 shall file reports semi-annually. Reports shall be filed each year on or before March 1st (reporting data required on FCC Form 477 as of December 31 of the prior year) and September 1st (reporting data required on FCC Form 477 as of June 30 of the current year). Entities becoming subject to the provisions of § 1.7001 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter.

## PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

■ 7. The authority citation for part 43 continues to read as follows:

**Authority:** 47 U.S.C. 154; Telecommunications Act of 1996; Pub.L. 104–104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended; Cable Landing License Act of 1921, 47 U.S.C. 35–39.

■ 8. Amend § 43.01 by revising paragraphs (a), (b), and (d) to read as follows:

**§ 43.01 Applicability.**

(a) The sections in this part include requirements which have been promulgated under authority of sections 211 and 219 of the Communications Act of 1934, as amended, with respect to the filing by communication common carriers and certain of their affiliates, as well as certain other providers, of periodic reports and certain other data, but do not include certain requirements relating to the filing of information with respect to specific services, accounting systems and other matters incorporated in other parts of this chapter.

(b) Except as provided in paragraphs (c) and (d) of this section, carriers and other providers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of this part.

* * * * *

(d) Common carriers and other service providers subject to the provisions of § 43.11 shall file data semi-annually. Reports shall be filed each year on or before March 1st (reporting data required on FCC Form 477 as of December 31 of the prior year) and September 1st (reporting data required on FCC Form 477 as of June 30 of the current year). Common carriers and other providers becoming subject to the provisions of § 43.11 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter.

■ 9. Amend § 43.11 to revise paragraphs (a), (b), and (c) to read as follows:

**§ 43.11 Reports of local exchange competition data.**

(a) All common carriers and their affiliates (as defined in 47 U.S.C. 153(1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. 153(16) and (47)), commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in § 20.15(b)(1) of this chapter), and Interconnected Voice over IP service providers (as defined in § 9.3 of this chapter), shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477.

(b) Respondents identified in paragraph (a) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477) and shall report the title of their certifying official.

(c) Disclosure of data contained in FCC Form 477 will be addressed as follows:

(1) Emergency operations contact information contained in FCC Form 477 are information that should not be routinely available for public inspection pursuant to § 0.457 of this chapter.

(2) Respondents may make requests for Commission non-disclosure of the following data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted:

(i) Provider-specific subscription data and

(ii) Provider-specific mobile deployment data that includes specific spectrum and speed parameters that may be used by providers for internal network planning purposes.

(3) Respondents seeking confidential treatment of any other data contained in FCC Form 477 must submit a request that the data be treated as confidential with the submission of their Form 477 filing, along with their reasons for withholding the information from the public, pursuant to § 0.459 of this chapter.

(4) The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to:

(i) A state commission provided that the state commission has protections in place that would preclude disclosure of any confidential information, and

(ii) ''Eligible entities,'' as those entities are defined in the Broadband Data Improvement Act, in an aggregated format and pursuant to confidentiality conditions prescribed by the Commission, and

(iii) Others, to the extent that access to such data can be accomplished in a manner that addresses concerns about the competitive sensitivity of the data and precludes public disclosure of any confidential information.

* * * * *

[FR Doc. 2013–19493 Filed 8–12–13; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R2–ES–2012–0049; 4500030113]**

**RIN 1018–AY58**

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Sphaeralcea gierischii (Gierisch Mallow) Throughout Its Range

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, determine that *Sphaeralcea gierischii (*Gierisch mallow) meets the definition of an endangered species under the Endangered Species Act of 1973, as amended (Act). Gierisch mallow is a plant species found in Mohave County, Arizona, and Washington County, Utah. This final rule implements the Federal protections provided by the Act for this species. The effect of this regulation is to add this species to the List of Endangered and Threatened Plants.

**DATES:** This rule is effective on September 12, 2013.

**ADDRESSES:** This final rule and final economic analysis are available on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/southwest/es/arizona/.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule is available for public inspection, by appointment, during

normal business hours, at U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021; by telephone (602) 242–0210; or by facsimile (602) 242–2513.

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602) 242–0210; or by facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

This document consists of a final rule to list as endangered *Sphaeralcea gierischii* (Gierisch mallow). In this final rule, we will refer to *Sphaeralcea gierischii* as Gierisch mallow.

*Why we need to publish a rule.* Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. In this final rule, we are explaining why Gierisch mallow warrants protection under the Act. This final rule lists the Gierisch mallow as an endangered species throughout its range in Mohave County, Arizona, and Washington County, Utah. Elsewhere in today's **Federal Register**, we designate critical habitat for the Gierisch mallow under the Act.

*The Endangered Species Act provides the basis for our action.* Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have determined that the Gierisch mallow meets the definition of an endangered species due to the combined effects of:

- Habitat destruction, modification, and degradation resulting from gypsum mining operations; livestock grazing; the spread of nonnative species; and increased risk of wildfire.
- Predation (herbivory) during drought years and during the reproductive period.
- Existing regulatory mechanisms that could provide protection to the Gierisch mallow through mining operations management by the Bureau of Land Management (BLM) and Arizona State Land Department (ASLD) but are inadequate to protect the species from existing and future threats.
- Small population size and restricted range of the species, which make the Gierisch mallow increasingly susceptible to further declines through stochastic wildfire events, spread of the nonnative grasses, and climate change.

*Peer review and public comment.* We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. Generally, the peer reviewers agreed with our interpretation of the science and provided information regarding population numbers and additional information regarding the threats and biology of the species. We also considered all comments and information we received during the comment period.

**Previous Federal Actions**

Please refer to the proposed listing rule for the Gierisch mallow (77 FR 49894; August 17, 2012) for a detailed description of previous Federal actions concerning this species.

Elsewhere in today's **Federal Register**, we designate critical habitat for the Gierisch mallow under the Act.

**Background**

It is our intent to discuss below only those topics directly relevant to this final rule listing the Gierisch mallow as endangered.

*Species Information*

Gierisch mallow is a perennial, flowering member of the mallow family. It produces few to many stems from a woody caudex (short, thickened, woody stem that is usually subterranean or at ground level). The stems are 43 to 103 centimeters (cm) (17 to 41 inches (in)) tall, and are often dark red-purple. The foliage is bright green and glabrous (not hairy). The leaf blades are 1.2 to 4 centimeters (cm) (0.47 to 1.57 inches (in)) long; 1 to 5 cm (0.4 to 1.9 in) wide; and usually longer than wide. The leaves are usually flat and egg-shaped; the leaf base is heart-shaped to truncate, with 3 to 5 lobes. The inflorescence is compound, with more than one flower per node. The outer envelope of the flower is 0.5 to 1.0 cm (0.2 to 0.4 in) long, green, and uniformly glabrous, and the orange petals are 1.5 to 2.5 cm (0.6 to 0.98 in) long (Atwood and Welsh 2002, p. 161).

Gierisch mallow was named as a unique, distinct species in 2002 (Atwood and Welsh 2002, p. 159). This species of mallow is distinguished from similar species, such as *Sphaeralcea rusbyi* (Rusby's globemallow), by the glabrous (smooth) foliage, few or no stellate (star-shaped) hairs restricted to the leaf margins, larger flowers, and restricted range and habitat.

Another closely related species is *Sphaeralcea moorei* (Moore's globemallow); distinguishing characters are the 3 to 5-parted narrow lobes, bright green leaves, and different habitat. As discussed by Atwood and Welsh (2002, p. 159), the genus *Sphaeralcea* consists of taxa whose morphological distinctions are compromised by overlap of many characters. The characteristics of the mature fruiting carpels (seed-bearing structures) are one of the more important distinguishing characters, but specimens were rarely collected with mature carpels. Atwood and Welsh (2002, pp. 161–163) collected globemallow species in northern Arizona and southern Utah, and reviewed previous collections. The characteristics described in their 2002 taxonomic key allow for the discrimination of the related and similar taxa known to occur in southern Utah and adjacent northern Arizona, thus making Gierisch mallow a species and, therefore, a listable entity under the Act. The work was published in the peer-reviewed journal *Novon,* which publishes short articles with the primary purpose of the establishment of nomenclature (scientific naming) of vascular plants. Dr. Atwood and Dr. Welsh are very familiar with the flora of Utah; Dr. Atwood is the Collections Manager of the S. L. Welsh Herbarium, and Dr. Welsh is Emeritus Curator of Vascular Plants at Brigham Young University, Utah. After careful review of the 2002 Atwood and Welsh publication and its recognition by the Integrated Taxonomic Information System (ITIS 2012) and its inclusion in the Utah Rare Plant Guide (Utah Rare Plants 2012), it is our conclusion that Gierisch mallow is a valid species because the characteristics described above can be used to distinguish this species from similar species. We also consider it a separate species due to its acceptance in peer-reviewed literature and recognition by taxonomic authorities, as described above.

*Biology, Habitat, and the Current Range*

Gierisch mallow is only found on gypsum outcrops associated with the

Harrisburg Member of the Kaibab Formation in northern Mohave County, Arizona, and adjacent Washington County, Utah (Atwood and Welsh 2002, p. 161). The Harrisburg Member is the most recent (topmost) exposed geologic layer of the Kaibab Formation. The Harrisburg Member is known for its soils containing high levels of gypsum (gypsiferous soils) (Biek and Hayden 2007, p. 58). The Kaibab Formation comprises a continuous layer of exposed limestone rock in the Grand Canyon region (USGS 2012, p. 1). The surrounding plant community is warm desertscrub (Mojave desertscrub). Very little is known about the life history of the Gierisch mallow, as it was only recently described. Gierisch mallow appears to be associated with biologic soil crusts within the gypsum deposits (Frates 2012, pers. comm.). Similarly, we know that other rare plants associated with gypsum soils are associated with a heavy cover of cryptogamic plants (lichens, mosses, and blue-green algae), except where natural erosion or other manmade factors have destroyed that cover (Nelson and Harper 1991, p. 168). Drohan and Merkle (2009, p. 96) state, however, that plant species that appear to be soil-specific can be found in those soils as a result of other factors in addition to soil chemistry. Although there are likely other factors that contribute to Gierisch mallow having a limited distribution, it is currently only found in gypsum soils. The species may be perennial because it is woody at the base and the same individuals have been observed for more than 1 year. It dies back to the ground during the winter and re-sprouts from the base during late winter and spring (January to March), depending on daytime temperatures and rainfall. Information from the BLM indicates that many of the Gierisch mallow populations occur on hillsides or steep slopes; however, Gierisch mallow has been documented growing on all slopes and aspects. While we do not know the specifics about Gierisch mallow, we know that several species of the genus *Sphaeralcea* grow well in disturbed soils (Wallace and Romney 1981, p. 32; Abella 2009, pp. 704–706; Abella 2010, pp. 1263–1264).

The pollination system (self-pollinated or obligate out-crosser), seed dispersal mechanisms, and the conditions under which seeds germinate are not known. Although we do not know how the species is pollinated, other species of the genus *Sphaeralcea* (globemallows) are pollinated by *Diadasia diminuta* (globemallow bee), which specializes in pollinating plants of this genus. Globemallow bees are considered important pollinators for globemallows (Tepedino 2010, p. 2). These solitary bees, as well as other *Diadasia* species, are known to occur within the range of the Gierisch mallow (Sipes and Tepedino 2005, pp. 490–491; Sipes and Wolf 2001, pp. 146–147), so it is reasonable to assume that they are potential pollinators of Gierisch mallow and other associated vegetation in the surrounding community. Winter rainfall in 2008 produced many seedlings of Gierisch mallow, indicating that they grow from seeds stored in the seed bank (Hughes 2009, p. 13). Higher densities of seedlings were located within known locations in Arizona and Utah after these winter rain events. Additionally, young plants have been observed on two reclaimed areas within an active gypsum mine (Service 2008a, p. 1), further indicating that seeds are stored in the seed bank; however, we do not know the long-term viability of these plants due to the disruption of the original soil composition. Furthermore, Hughes (2011, p. 7) has documented a decline in the numbers of plants in both of the two reclaimed areas over the last 5 years.

We have no information on the historical range of this species because it is a newly discovered plant. Currently, there are 18 known populations of the Gierisch mallow restricted to less than approximately 186 ha (460 ac) in Arizona and Utah. The main populations in Arizona are located south of the Black Knolls, approximately 19.3 km (12 mi) southwest of BLM's Arizona Strip Field Office in St. George, Utah, with the southernmost population of this group being on the edge of Black Rock Gulch near Mokaac Mountain. There is another population approximately 4.8 kilometers (km) (3 miles (mi)) north of the Black Knolls, on ASLD lands near the Arizona/Utah State line. The Utah population is located on BLM lands within 3.2 km (2 mi) of the Arizona/Utah State line, near the Arizona population on ASLD land. Habitat for the Gierisch mallow occurs on Utah State Trust lands managed by the State of Utah School and Institutional Trust Lands Administration (SITLA).

There are no other known populations of the Gierisch mallow. We theorized that, because gypsum outcrops associated with the Harrisburg Member are scattered throughout BLM lands in northern Arizona and southern Utah, additional populations may exist. Dr. Atwood and Dr. Welsh conducted extensive surveys in these areas because numerous other rare plant species are associated with these landforms (Atwood 2008, p. 1). One record of a Gierisch mallow from the Grand Canyon-Parashant National Monument was presented to us (Fertig 2012, p. 3); however, after careful scrutiny, Johnson and Atwood (2012, p. 1) determined that this record is actually Rusby's mallow and not Gierisch mallow.

*Status and Population Estimates*

Atwood (2008, p. 1), and later Hughes (Service 2008a, p. 1), estimated the population size of the Gierisch mallow from six of the Arizona locations. These populations are referred to as ''Hills.'' There are a total of 18 populations rangewide, with 17 populations on lands managed by the BLM, and 1 on lands managed by the ASLD. Seventeen populations occur in Arizona, and one occurs in Utah.

Atwood and Hughes' population estimates were simple visual estimates and have only been conducted for four of the 17 populations. Hughes' estimates were conducted using belt transects that are 1.83 m (6 ft) wide and 91.44 m (300 ft) long. Hughes carried a 1.83-m (6-ft) long plastic pipe and counted every Gierisch mallow plant that was within the length of the pipe as he walked the belt transects (Hughes 2012a). These estimates are presented in Table 1 for the areas surveyed in Arizona. Hughes (2012b, pp. 2–4) established these belt transects on six of the ''Hills'' (Hills 1, 2, 4, 5, 6, and 7) and began to count the number of individuals. The populations on Hills 6 and 7 were monitored, and the numbers of individuals within the populations were counted for the first time in 2012. There is a population on Hill 3, but there are no estimates for it. Data in Table 1 are from files in BLM's Arizona Strip Field Office and St. George Field Office, and the Service's Arizona Ecological Services Office. The actual transect counts appear in Table 1 in bold, in parentheses. Surveys estimate total population size to be between 11,000 and 18,000 individuals in Arizona.

TABLE 1—POPULATION NUMBERS FOR GIERISCH MALLOW FROM SIX LOCATIONS IN ARIZONA

| Site | Numbers 2001 | Numbers 2003 | Numbers 2007 | Numbers 2008 | Numbers 2009 | Numbers 2010 | Numbers 2011 | Numbers 2012 |
|---|---|---|---|---|---|---|---|---|
| Hill 1 (BLM) | 150+ (100) | 50 (30) | (58) | No data | 300 (155) | 200 (85) | * | 200 (no data) |
| Hill 2 (BLM) | 150+ (100) | 40 (31) | (15) | 50 (37) | 40 (23) | No data | * | 30 (26) |
| Hill 4 (BLM) | No data | 5,000–9,000 (180). | (176) | (65) | No estimate (108). | No estimate (170). | No estimate (136). | 5,000–9,000 (116) |
| Hill 5 (ASLD) | No data | 2,000–3,000 (115). | No data | No data | No data | No data | No data | No data |
| Hill 6 (BLM) | No data | No data | No data | No data | No data | No data | No data | 3,000–4,000 (610) |
| Hill 7 (BLM) | No data | No data | No data | No data | No data | No data | No data | 1,200–2,000 (129) |

* These sites were visited in 2011, and Gierisch mallow plants were observed; however, no data were collected.

Total population size in Utah was estimated to be approximately 200 individuals in 2005 (Franklin 2007, p. 1). In spring 2008 and 2009, Hughes (2008a, p. 12; Hughes 2009, p. 15) conducted more extensive surveys of gypsiferous soils in Utah and estimated the population to be between 5,000 and 8,000 individuals. The Service plant ecologist and staff from the BLM's Arizona Strip Field Office visited all of the known locations in February 2008 (Service 2008a, p. 1). Population estimates were not made at this time because the plants were just emerging from winter dormancy, but there were plants present at all of the known locations visited.

Since surveys began, no new populations have been found outside of the known areas. In addition to the information provided in Table 1, Hughes (2008a, p. 12) reported counts for transects on two rehabilitated sites within the Western Mining and Minerals, Inc., gypsum operation on and near Hill 4, where 85 and 60 plants were counted on the two transects in 2008. These plants are reestablishing themselves in the reclaimed areas from the original seed bank. Hughes (2009, p. 14) counted 50 and 32 plants on these sites in 2009. In 2011, Hughes (2012, p. 7) completed transect surveys on the same reclaimed sites as he did in 2008 and 2009, and counted 67 plants on one rehabilitated site and 1 plant on the other rehabilitated site. Data from surveys conducted in 2012 indicate a slight increase in the population of Gierisch mallow on both reclaimed sites (Hughes 2012b). Hughes (2012b) also indicates that 2012 precipitation levels were very low in the winter and spring, while summer precipitation was above average. We do not have any information to indicate why there was a substantial decrease in plant numbers at these reclaimed areas for 3 years, especially since 2010 and 2011 were significant moisture years (Hughes 2011, p. 1; Hughes 2012c, p.1). Because the Gierisch mallow is only found in gypsiferous soils, it is possible that they are declining due to disruption of the original soil composition in these reclaimed soils. Outside of the reclaimed areas, some populations of the Gierisch mallow appear to be fluctuating annually according to data provided by Hughes (2011, pp. 4–7). Some populations appear to be decreasing, others have shown slight increases, and some populations have remained stable (Hughes 2011, pp. 4–7; Hughes 2012b, pp. 2–4).

## Summary of Comments and Recommendations

Due to the nature of the proposed rule, we received combined comments from the public on the listing action and the critical habitat designation. We have separated those comments accordingly and are only addressing the comments related to the listing of the Gierisch mallow in this rule. Comments related the designation of critical habitat for the Gierisch mallow can be found in the final rule designating critical habitat published elsewhere in today's **Federal Register**.

We requested written comments from the public on the proposed listing for the Gierisch mallow during two comment periods. The first comment period, which was associated with the publication of the proposed rule (77 FR 49894), opened on August 17, 2012, and closed on October 16, 2012. The second comment period opened on March 28, 2013 (78 FR 18943), and closed on April 29, 2013. We also contacted appropriate Federal, State, and local agencies; scientific organizations; peer reviewers, and other interested parties and invited them to comment on the proposed rule during these comment periods. Newspaper notices inviting general public comment were published in the Kingman Daily Miner on September 12, 2012, and in the Saint George Spectrum on September 13, 2012. Additionally, letters were sent to stakeholders and special interest groups on September 12, 2012. We received no request for a public hearing.

During the first comment period, we received 19 comment letters directly addressing the proposed listing and critical habitat designation for the Gierisch mallow. During the second comment period, we received one comment letter addressing the proposed listing. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

*Peer Review*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals outside the Service with scientific expertise to review our technical assumptions, interpretations of biology, and use of ecological principles with respect to the Gierisch mallow. We received responses from three of the four peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding threats to Gierisch mallow. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

*Peer Reviewer Comments*

(1) *Comment:* Only 16 percent of occupied habitat is planned for mining, which is not enough to cause Gierisch mallow to go extinct.

*Our Response:* We agree that the amount of occupied habitat for the Gierisch mallow is small in the mining areas; however, approximately 46 percent of the known plants will be lost in these habitat areas. Please see the Summary of Factors Affecting the Species section of this rule.

*Public Comments*

(2) *Comment:* We received several comments that revenue and jobs would be lost and that gypsum mining operations may be negatively impacted as a result of listing the Gierisch mallow under the Act.

*Our Response:* The Act requires decisions to be based on the best available science at the time of the listing. In addition, we base our decisions to list a species on the five threat factors discussed in the proposed rule (77 FR 49894; August 17, 2012) and in this final rule. Please refer to the Summary of Factors Affecting the Species section in this final rule. Additionally, the economic analysis did not support this claim. The economic analysis includes the analysis of two future consultations on mining activity on BLM-managed land and assumes that these consultations will not result in changes to the level of mining activity. The Service expects the most likely outcome of these consultations to include conservation measures such as land reclamation.

(3) *Comment:* The occurrence of Gierisch mallow on steep slopes may indicate a refugia from grazing, and the species could be more widely distributed in absence of grazing.

*Our Response:* We have no information to support this observation regarding steep slopes acting as refugia. We are aware that Gierisch mallow grows in other areas besides steep slopes and have addressed this in this listing rule. We acknowledge that grazing is a threat to the species; however, we have determined that it is not a significant threat to the Gierisch mallow. Please refer to the Summary of Factors Affecting the Species section in this final rule.

(4) *Comment:* One commenter questions if Gierisch mallow is a separate species because no genetic testing has been completed.

*Our Response:* The best available science indicates that Gierisch mallow is a valid taxon. Genetic analysis is not needed to differentiate species. See the *Species Information* section for a complete description of the biology and taxonomy of the species.

(5) *Comment:* In preparing this final listing determination, we used the best available scientific and commercial data as required under section 4(b)(1)(A) of the Act. We received several comments stating that we did not use the best science because we did not consult geologists and botanists regarding the soil layers associated with the Harrisburg Member and other similar gypsum deposits and that we did not thoroughly survey the widely ranging Harrisburg Member for the Gierisch mallow.

*Our Response:* All gypsum deposits and available habitat in the Harrisburg Member were surveyed for the Gierisch mallow. It is common practice for botanists to work with local geologists to determine where appropriate soils layers are. We consulted with local botanists to gather data for our determination; therefore, we used the best science available.

(6) *Comment:* We received several comments stating that there is no proof that the Gierisch mallow is threatened, that we are missing data to support our threats analysis, and that more years of study are needed to gather the necessary data to support our analysis.

*Our Response:* As stated previously, section 4(b)(1) of the Act requires that decisions be based on the best available science at the time of listing. The commenters did not provide any additional data contradicting the threats analysis. We based our decision on the best available science at the time of listing, as required by the Act. Regarding whether we should undertake additional years of study to gather additional data, the Act requires that we finalize or withdraw a proposed rule within 1 year. Based on the currently available data, we believe it is appropriate to finalize the decision at this time. We will continue to work cooperatively with partners to conserve and work towards recovery of the species.

(7) *Comment:* We received several comments stating that it is not known if Hill 4 will be mined.

*Our Response:* We based our analysis on current, available information, and, according to the mining company, Hill 4 is still currently included in the mine expansion area.

(8) *Comment:* We received several comments stating that Gierisch mallow should only be listed after cooperative conservation efforts are demonstrated ineffective and that Gierisch mallow is better protected through existing mechanisms.

*Our Response:* The Act sets forth a requirement that a final rule be issued no later than 1 year after a proposal or the proposal be withdrawn. As we are not withdrawing our proposal to list Gierisch mallow, we must publish the final rule to list the species within 1 year of the proposed rule. Listing a species under the Act does not preclude working cooperatively with partners to conserve and work towards recovery of a species. We are currently working with partners to conserve the Gierisch mallow and will continue to work with partners in the future. Additionally, we reviewed the existing conservation measures and concluded they are not sufficient to ameliorate the threats. We do not know if enough seeds can be collected to reestablish pre-mining population numbers in reclaimed areas. Furthermore, preliminary data from seed germination studies indicate that reestablishing populations from collected seeds may be difficult. Refer to our Summary of Factors Affecting the Species section for a thorough review of the threats.

(9) *Comment:* The Gierisch mallow was observed blooming twice in 2012 (spring and fall) and producing seed with each bloom cycle.

*Our Response:* We acknowledge that the plant had two bloom cycles in 2012, and produced seed each time. As was acknowledged by the commenter, this was likely to due to an abundance of rainfall in 2012. We have no other data to suggest that this is a regular occurrence that contributes to the long-term viability of the species.

(10) *Comment:* The Service does not have data to support that off-highway vehicle (OHV) use and illegal dumping impact the species.

*Our Response:* Service biologists and plant ecologists have observed the effects of unauthorized OHV use and illegal dumping in Gierisch mallow habitat. We have documentation that these are ongoing activities that occur in habitat and that they are disrupting the soil crusts as well as contributing to the alteration of vegetation composition, thereby impacting the species. Refer to the Summary of Factors Affecting the Species section for a complete discussion on the effects of OHV use and illegal dumping.

(11) *Comment:* The commenter questions if the Gierisch mallow came into existence because of the mines.

*Our Response:* Gierisch mallow is a recently described species that is closely associated with gypsum soil types. Gierisch mallow also occurs on gypsum soil deposits that are not being mined. Gierisch mallow is not dependent on the mines, nor did it come into existence because of the mines.

(12) *Comment:* We received several comments regarding livestock grazing operations helping the Gierisch mallow or improving its habitat.

*Our Response:* No information was provided to substantiate these observations.

(13) *Comment:* One commenter stated that the Gierisch mallow can be grown from seed and, therefore, is not endangered.

*Our Response:* Under the Act, a species is considered endangered if it is

in danger of extinction throughout all or a significant portion of its range. The purpose of the Act is to protect both the species and the ecosystem upon which it depends. Therefore, preservation of the species and its habitat is essential for the conservation and recovery of the species. Although Gierisch mallow has been demonstrated to be grown from seed with limited success, this alone does not conserve the ecosystem, including the pollinators that are necessary for the species to reproduce. As we discuss in the Summary of Factors Affecting the Species section of this final rule, the threats to the Gierisch mallow and its habitat are significant, and, therefore, the species warrants protection under the Act.

(14) *Comment:* We received several comments related to the lack of sufficient BLM grazing and OHV use policies and standards, including monitoring protocols, to protect the Gierisch mallow.

*Our Response:* As detailed below in our discussion of the threats to the species, grazing and OHV use are not threats that have significant impacts to the species rangewide. We have no oversight regarding the creation and implementation of BLM policies and standards.

(15) *Comment:* We received several comments stating that not enough notice was given or that individuals were not notified at all regarding the proposed listing and comment period.

*Our Response:* Per the Act as well as Service policy and practices, legal notices indicating the publication of the proposed rule and inviting general public comment for the 60-day public comment period were published in the Kingman Daily Miner on September 12, 2012, and in the Saint George Spectrum on September 13, 2012. Additionally, letters were sent to stakeholders and special interest groups on September 12, 2012. The document making available the draft environmental assessment and draft economic analysis, and opening a 30-day public comment period on these draft documents as well as the proposed rule, was published on March 29, 2013, in the **Federal Register**.

(16) *Comment:* One commenter provided information regarding ecological site guide descriptions to demonstrate the proportion of forbs, including globemallow, which would be expected in Historic Climax Plant Community. This information was provided to demonstrate that Gierisch mallow should be found in low numbers in the appropriate soil types.

*Our Response:* Ecological site guide descriptions predict the annual production (pounds per acre) of plant groups (grass/grass-like, forbs, shrub/vine, and trees). They further break down plant species composition within the plant groups, also by annual production. A forb species may be more numerous at a site while providing less annual production than fewer numbers of shrubs and perennial grasses. Therefore, although an ecological site description will include expected composition by weight of a species or group of species, it does not indicate the expected numbers or densities of these plants at a particular site.

(17) *Comment:* One commenter suggested that Gierisch mallow is supposed to occur in low density on the mining rehabilitation sites where top soil was replaced after mining. The commenter further suggested that other large shrubs are more abundant in these areas and that, according to the ecological site descriptions, shrubs should be more abundant than Gierisch mallow.

*Our Response:* As previously described, ecological site descriptions provide the expected annual production in pounds per acre rather than abundance or density of plant species. Further, an ecological site description provides a plant community description for an undisturbed site and its historic condition. It is reasonable to assume that plants with soil-specific requirements and tolerances, such as Gierisch mallow, would be low in both quantity and density after the original soil composition and structure has been altered. Likewise, we find it reasonable to assume that more common shrubs without soil-specific requirements such as *Larrea tridentata* (creosote bush) or *Atriplex canescens* (four-wing saltbush) would be more abundant in these disturbed areas. We do not know what the capabilities of Gierisch mallow are to reestablish to pre-disturbance population levels.

## Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Because the Gierisch mallow has a limited range and distribution, including being found in a specific soil composition (gypsum outcrops), it is highly susceptible to habitat destruction and modification. Specifically, habitat destruction or modification resulting from mining operations, recreational activities, and wildfires associated with the spread of nonnative grass species are threats to the Gierisch mallow.

#### Mining

Gypsum mining is an ongoing source of habitat modification for the Gierisch mallow in Arizona. Gypsum is used in construction (including the manufacturing of drywall) and for a variety of agricultural purposes. Gypsum deposits are found at various depths within the Harrisburg Member. Many of the most valuable gypsum deposits are not at ground level. This means that surface materials need to be removed and stockpiled, while the subsurface gypsum is mined. The stockpiled surface material is then used to reclaim the area after the gypsum has been removed. Because all the topsoil is temporarily removed, gypsum mining temporarily removes the plant's habitat and any plants growing in the affected area. Although the topsoil is replaced, the original structure of the gypsum soil and its composition is altered; therefore, the reclaimed soils do not contain the original gypsum soil structure and composition with which the plants are associated.

There is an existing gypsum mining operation (Black Rock Gypsum Mine) on BLM land affecting the Hill 4 population, the largest population in Arizona (Hughes 2009, p. 13). The plants in the Hill 4 area are not restricted to one hill, but are scattered among several smaller hills that all contain gypsum outcrops. One of the larger deposits is currently being mined. A large amount of soil has been removed, but we cannot quantify how much of the habitat this comprises at this site, as we do not have access to ASLD lands due to ASLD access policies. Based on prior monitoring before access was limited (Hughes 2008, p. 13), there are other small hills within the footprint of the mining claim that support the Gierisch mallow; therefore, we assume the Gierisch mallow occupied the disturbed area. Western

Mining and Minerals, Inc., the mine operator, has inquired about expanding the current operation (Service 2008a, p. 1). The area they propose to expand into currently supports the largest portion of the Hill 4 population, estimated to be between 5,000 and 9,000 plants (Hughes 2008, p. 14), which comprises approximately 35 percent of the entire population rangewide and approximately 39 percent of the population in Arizona. The proposed expansion would remove the entire population and its habitat on Hill 4. An environmental assessment (under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*) for expansion of the quarrying activities within the Black Rock Gypsum Mine has been completed, and the Mining Plan of Operation has been approved (BLM 2008a). Because the demand for gypsum has declined along with the decrease in the housing market, mining activity has not yet reached the expansion area (Cox 2011a, pers. comm.). Recent discussions with the BLM indicate that the expansion could happen as soon as 3 years from now or may take up to 10 years, depending on the housing market, but BLM staff believes the expansion is very likely to happen (Cox 2011a, pers. comm.).

There is another gypsum mine, located near Hill 5, supporting another large Arizona population (approximately 2,000 to 3,000 plants). This mine, operated by Georgia-Pacific, is on ASLD lands and encompasses 178 ha (440 ac). Service biologists did not receive permission to enter the site in February 2008, but, through the site boundary fence, did notice at least one pile of spoils near the population, indicating some recent surface-modifying activity prior to the Service biologists' visit. The lease was first issued in 2006, but Georgia-Pacific has not mined anything, due to the slowing of the economy. The surface-modifying activity observed in February 2008 was likely a result of moving topsoil in preparation to begin mining activities (Dixon 2011, p. 1). Because the lease is for 20 years, we expect that mining operations will begin at some point within the next 13 years, or when the housing market improves. We presume that habitat for the species would be affected by the operation because the technique for gypsum mining necessarily involves removal of the topsoil, eliminating, at least temporarily, the species' ability to survive there. There are no known protection measures for Gierisch mallow or its habitat within the lease on State trust lands.

In addition to the Georgia-Pacific mine, there are several ASLD-issued exploration permits in the area on ASLD lands surrounding Hill 5. These are all relatively new claims, and no significant work has been done on them, yet some drilling was completed, but no other exploration or mining work has occurred. With the depressed housing market, the ASLD does not anticipate any gypsum mining will occur until the housing market improves (Dixon 2011, p. 1).

Gypsum mining is a threat to this species and its habitat. The mining operation removes plants and habitat for the duration of the mining activities, and, post-mining, the reclaimed areas may or may not be capable of supporting the plants. A few Gierisch mallow plants were seen on reclaimed areas near Hill 4, but no information on the density of plants before the disturbance exists. Plants continue to be observed in two reclaimed areas near Hill 4; however, the numbers are relatively low (Hughes 2012, pp. 6–7). Furthermore, it is unknown if restored areas will support the plants sufficiently to restore populations to pre-mining levels. Restoration efforts with this species are currently being planned within the Black Rock Mine to assess the feasibility of seeding reclaimed areas with Gierisch mallow (Service 2008b, p. 1), although preliminary data indicate that germination rates from collected seeds are low (Reisor 2012, pers. comm.). Observations during the early stages of restoration efforts also suggest that the reclaimed areas have different vegetation composition and cover than nearby undisturbed areas (Reisor 2012, pers. comm.).

We conclude that the ongoing and future gypsum mining activities, as authorized by the BLM and the ASLD, are a significant threat to this species. Although there has been no mining activity on ASLD lands since 2007, the Service concludes this inactivity is temporary and that mining will resume when the housing market improves in the future. There will be a significant reduction in the number of individuals of the species when the Western Mining and Minerals Inc., operation (Black Rock Gypsum Mine) expands, and when mining activities resume at the Georgia-Pacific mine on lands managed by the ASLD. Although Hills 4 and 5 comprise only 2 of the 18 populations, approximately 46 percent of all the known Gierisch mallow plants rangewide are in these two areas. That would leave the other Arizona locations and the one Utah population, and those areas support fewer plants. The loss of suitable habitat at Hills 4 and 5 would result in the loss of approximately 46 percent of the known plants rangewide. This substantial loss of the total population would result in a compromise to the long-term viability of the species, due to reduced reproductive potential and fragmentation. The limited distribution of this species, the small number of populations, the limited amount of habitat, and the species' occurrence only in areas that support high-quality gypsum deposits lead us to conclude that mining is a threat that has significant impacts to the species.

Grazing

In general, grazing practices can change vegetation composition and abundance, cause soil erosion and compaction, reduce water infiltration rates, and increase runoff (Klemmedson 1956, p. 137; Ellison 1960, p. 24; Arndt and Rose 1966, p. 170; Gifford and Hawkins 1978, p. 305; Robinson and Bolen 1989, p. 186; Waser and Price 1981, p. 407; Holechek *et al.* 1998, pp. 191–195, 216; and Loftin *et al.* 2000, pp. 57–58), leaving less water available for plant production (Dadkah and Gifford 1980, p. 979). Fleischner (1994, pp. 630–631) summarized the ecological impacts of grazing in three categories: (1) Alteration of species composition of communities, including decreases in density and biomass of individual species, reduction of species richness, and changing community organization; (2) disruption of ecosystem functioning, including interference in nutrient cycling and ecological succession; and (3) alteration of ecosystem structure, including changing vegetation stratification, contributing to soil erosion, and decreasing availability of water to biotic communities.

Grazing occurs in most populations of the Gierisch mallow in Arizona and Utah on BLM, ASLD, and SITLA lands. Grazing is excluded from both the Black Rock Gypsum Mine on BLM land and the Georgia-Pacific Mine on ASLD land, although grazing occurs on the reclaimed areas. Gierisch mallow populations occur on three BLM grazing allotments in Arizona and one allotment in Utah. In Arizona, the Black Rock, Lambing-Starvation, and Purgatory allotments all contain populations of Gierisch mallow. The Black Rock Allotment encompasses 15,250 ha (37,685 ac) that are grazed year-round, but this allotment is on a deferred grazing system, which means that pasture use is rotated so that each pasture receives a set amount of rest (non-use) every year. As previously stated, there are an additional 1,152 ha (2,846 ac) in this allotment that are

unavailable for grazing because of the Black Rock Gypsum Mine, but heavy grazing has been documented on the reclaimed sites (Reisor 2012, pers. comm.; Hughes 2011, p. 8). Gierisch mallow occurs in both the ''Lizard 1'' and ''Lizard 2'' pastures within this allotment, and both pastures are typically used in the spring to allow the livestock to utilize cheatgrass when it is still green. These two pastures are typically rotated, that is used every other year so that one pasture receives a full year of rest.

The Lambing-Starvation Allotment encompasses 5,446 ha (13,457 ac) that are grazed from November 16 through May 15 every season and is also on a deferred system. Gierisch mallow occurs in two of the three pastures in this allotment, the North Freeway and South Freeway pastures. These two pastures are also used in the spring, as the third pasture is along the Virgin River and contains critical habitat for the endangered southwestern willow flycatcher (*Empidonax traillii extimus*). Because the third pasture contains critical habitat for the southwestern willow flycatcher, its use is restricted seasonally, causing livestock to spend more time in the two pastures containing Gierisch mallow, including during the spring growing season for the Gierisch mallow. The Lambing-Starvation Allotment also contains ASLD lands with a grazing lease; however, the BLM oversees the management of this allotment. The Purgatory Allotment encompasses 1,985 ha (4,905 ac) in a single pasture that is grazed from December 1 through May 31 every season. Only a small portion of a Gierisch mallow population occurs within this allotment. Information from the BLM indicates that many of the Gierisch mallow populations occur on hillsides or steep slopes, and livestock do not typically go up to these areas looking for forage unless it is a dry year (Roaque 2012a, p. 2); however, DeFalco (2012, pers. comm.) has observed livestock climbing rocky hillsides and steep slopes while conducting extensive research in the northeast Mojave Desert. Additionally, livestock have been documented consuming Gierisch mallow in populations that occur on lesser- or flat slopes. Livestock consumption of Gierisch mallow has more of an impact to the species during the flowering period, when the plants are reproducing. Failure to flower and, therefore, produce seeds can have adverse effects on the ability of Gierisch mallow to reproduce. According to Reisor (2012, pers. comm.), entire flowering stalks were removed and reproduction did not occur in several areas, including on steep slopes, in 2010 and 2012.

In Utah, grazing occurs in the one allotment that contains Gierisch mallow and its habitat. The Curly Hollow Allotment is comprised of approximately 9,105 ha (22,500 ac) of BLM land and 2,226 ha (5,500 ac) of SITLA land. SITLA lands contain approximately 68 ha (167 ac) of Gierisch mallow habitat that is grazed within the Curly Hollow Allotment. This is a four-pasture allotment that is managed for intensive grazing and a rest rotation system similar to those described above. Gierisch mallow only occurs in the River Pasture, which is usually grazed from November 1 through February 28 of each season. Recent wildfires had burned much of the upper three pastures; therefore, the River Pasture has been grazed beyond February 28 for several years to alleviate pressure on the three upper pastures while the vegetation recovered from the wildfire in the absence of livestock grazing (Douglas 2012a, p. 1). The three upper pastures are now considered rehabilitated, and grazing in the River Pasture should resume with its normal season of use from November 1 through February 28. The general condition of the range in the River Pasture is fair to good (moderate cheatgrass spread); however, portions near Sun River, and the *Astragalus holmgreniorum* (Holmgren milkvetch) (an endangered plant) habitat, have been disturbed in the past, resulting in a more significant spread of cheatgrass and *Malcolmia africana* (African mustard). Livestock utilization on Gierisch mallow has not been monitored by BLM's St. George Field Office, but conditions are expected to be similar to livestock utilization described above in Arizona (Douglas 2012a, p. 1).

In addition to consumption, livestock are known to trample plants. As noted, livestock do not typically go up into Gierisch mallow habitat on the BLM allotments in Arizona and Utah due to the steeper hillsides and slopes that this plant is known to inhabit (Roaque 2012a, p. 2; Douglas 2012a, p. 1). Given the grazing management described above and the observations of how infrequently livestock are in Gierisch mallow habitat, trampling of plants does not likely significantly impact the overall viability of these populations.

Habitat degradation in the Mojave Desert, through loss of microbiotic soil crusts (soils containing algae, lichen, fungi, etc.) due to livestock grazing, is a great concern (Floyd *et al.* 2003, p. 1704). Grazing can disturb soil crusts and other fundamental physical factors in landscapes. For example, climatologists and ecologists have attributed increasing soil surface temperatures and surface reflectivity in the Sonoran Desert to grazing-related land degradation (Balling *et al.* 1998 in Floyd *et al.* 2003, p. 1704). Biological soil crusts provide fixed carbon on sparsely vegetated soils. Carbon contributed by these organisms helps keep plant interspaces fertile and aids in supporting other microbial populations (Beymer and Klopatek 1991 in Floyd *et al.* 2003, p. 1704). In desert shrub and grassland communities that support few nitrogen-fixing plants, biotic crusts can be the dominant source of nitrogen (Rychert *et al.* 1978 and others in Floyd *et al.* 2003, p. 1704). Additionally, soil crusts stabilize soils, help to retain moisture, and provide seed-germination sites. Soil crusts are effective in capturing wind-borne dust deposits, and have been documented contributing to a 2- to 13-fold increase in nutrients in southeastern Utah (Reynolds *et al.* 2001 in Floyd *et al.* 2003, p. 1704). The presence of soil crusts generally increases the amount and depth of rainfall infiltration (Loope and Gifford 1972 and others in Floyd *et al.* 2003, p. 1704).

In addition to loss of soil crusts, grazing often leads to soil compaction, which reduces water infiltration and can lead to elevated soil temperatures (Fleischner 1994, p. 634; Floyd *et al.* 2003, p. 1704). All of these soil disturbances can increase erosion by both wind and water (Neff *et al.* 2005, p. 87). Because Gierisch mallow only occurs in gypsum soil outcrops, this loss of soil crust, increased soil compaction, and potential increase in erosion may lead to reduced fitness of individual plants as nutrients decrease when livestock enter and concentrate in these areas during dry years. Additionally, it is possible that individual plants, especially seedlings, are not able to take root in any unstable soils that result from loss of soil crusts due to livestock grazing. Increased erosion and decreased water infiltration from loss of soil crusts can lead to depletion of gypsum and other specific soil features that the Gierisch mallow requires. These effects may be significant to Gierisch mallow populations because grazing occurs at some level throughout all populations. Reduced fitness of individual plants may lead to reduced overall reproduction, which may lead to decreases in the overall population.

Grazing can also lead to changes in vegetation structure, including the proliferation of nonnative, invasive species such as cheatgrass and red brome. Livestock have been implicated

in the spread of weeds (Brooks 2009, p. 105), and both abundance and diversity of native plants and animals is lower in grazed areas as compared to ungrazed habitat in the Mojave Desert (Brooks 2000, p. 105). We do not know the current density of these two nonnative grass species within the Gierisch mallow populations; however, we do know that both of these nonnative species are prevalent in high densities throughout the Mojave Desert in northwest Arizona and southwest Utah, including throughout all three allotments in Arizona and the allotment in Utah (Roaque 2012a, pp. 1–2; Douglas 2012, p. 1). While cheatgrass and red brome appear not to favor gypsiferous soils under normal (dry) conditions, they can be abundant in Gierisch mallow habitat during wet years, as was recently observed (Roaque 2102b, p. 1). Red brome has also been documented in high density in similar gypsiferous soils near Gierisch mallow populations after wet years (Roth 2012, entire). The proliferation of cheatgrass and red brome can lead to competition with Gierisch mallow for both water and nutrients, which can lead to decreased reproduction and fitness in individual Gierisch mallow plants.

In addition to decreased reproduction and fitness in established plants, the spread of these two species can also make the habitat less suitable for establishment of new plants. If cheatgrass and red brome reach high densities throughout all of the Gierisch mallow populations, this can lead to a significant reduction in the proper functioning of the habitat, which in turn would lead to a reduction in fitness and reproduction population-wide and an overall population decline. Given the limited distribution of Gierisch mallow and the known abundance of cheatgrass and red brome in its habitat, continued proliferation of these two species into Gierisch mallow habitat is likely to have significant effects to the species and its habitat. The number of populations may be reduced and their current limited distribution may become even more limited. Additionally, the overall resiliency of the species may be significantly reduced, especially if the spread of these nonnative grasses leads to other stochastic events, such as wildfire. Although grazing can help promote the spread of nonnative weeds such as cheatgrass and red brome, and their spread is a threat to the Gierisch mallow and its habitat, we do not know how much livestock contribute to their spread. The threat of wildfire resulting from the spread of nonnative species will be discussed in more detail in ''Nonnative, Invasive Species'' below.

In summary, livestock grazing can have many effects on Gierisch mallow and its habitat, and on desert ecosystems in general, particularly on soils. However, livestock do not typically spend much time in Gierisch mallow habitat, due to the steeper hillsides and slopes that this plant inhabits, unless drought conditions cause livestock to search for forage on the steeper hillsides and slopes. When livestock do enter Gierisch mallow habitat, some limited soil disturbance may occur, and individual plants may be affected, although we do not anticipate population-level effects to the Gierisch mallow unless heavy grazing occurs in the large populations during the flowering and reproductive period. Livestock have been implicated as a mechanism for the spread of cheatgrass and red brome. Although we do not know the extent to which livestock spread these two nonnative grasses, the spread of these grasses does pose a threat to the Gierisch mallow. Because of these potential effects from livestock grazing, we consider grazing to be a threat to the species that has a moderate level of impact to populations, especially during drought years and during the reproductive season in the spring.

Recreation Activities

There is evidence of off-road vehicle (OHV) activity in Utah. Several of the smaller hills were crisscrossed with OHV tracks (Service 2008, p. 1), and these areas are closed to OHV use off of designated roads and trails (Douglas 2012b, p. 1); therefore, this is considered unauthorized OHV use. Washington County is projected to be one of the fastest growing counties in Utah, with a growth rate of 3.9 percent. The population of St. George has grown from 64,201 (2005) to 88,001 (2010), and is expected to increase to 136,376 by 2020 (St. George Area Chamber 2010, pp. 2–3). The surrounding open spaces around St. George are popular for OHV use because of the relatively flat terrain and ease of access.

Vollmer *et al.* (1976, p. 121) demonstrated that shrubs exposed to repeated driving (continued use of the same tracks) were severely damaged. Both live and dead stems were broken and pressed to the ground. Stems still standing exhibited broken twigs or shoots and leaves were dislodged. Damage to about 30 percent of all shrubs examined in tire tracks were scored at 100 percent damage. Vollmer *et al.* (1976, p. 121) go on to state that approximately 54 percent of the shrubs in the tracks sustained 90 percent or greater damage. The numbers of annual shrubs growing in regularly driven ruts were lower than in other areas (Vollmer *et al.* 1976, p. 124). These data indicate that individual Gierisch mallow plants may be susceptible to the effects of OHV use in this area. Plants may be damaged to the point that they are no longer viable and able to produce seed. Seedlings may not be able to reach maturity and reproduce if they are crushed to point of significant damage. As unauthorized OHV use increases in these areas and associated unauthorized trails proliferate, this population of Gierisch mallow may experience an overall reduction in fitness.

In addition to the direct effects to vegetation, unauthorized OHV use can have the same indirect effects that were previously described by livestock grazing, including soil compaction, loss of soil crusts, erosion, and the promotion and spread of nonnative, invasive species. Refer to the livestock grazing discussion above for a complete description of the effects to soil composition and how those effects impact Gierisch mallow and its habitat.

In summary, we consider continued unauthorized OHV use (off of designated roads) to be a threat that has a potential future impact to this species and its habitat in Utah. Continued unauthorized OHV use can have a significant effect on the long-term viability of the Utah population of the Gierisch mallow because habitat degradation can be severe enough to prevent reestablishment of new plants, as well as removing mature, reproducing plants from the population. As stated above, Hughes (2009, p. 14) estimated this population to be between 5,000 and 8,000 individuals in 2009. While this is only one of 18 known populations, this is the second largest population of the plant and this population includes almost half of the total population, rangewide. This population is important to the long-term viability of the species. Given that this large population only encompasses 1.01 ha (2.5 ac) and is easily accessible, these activities may lead to enough Gierisch mallow plants being crushed to reduce the overall fitness of the population. Therefore, we conclude that this activity is threat to the species that has moderate impacts to this population in Utah.

Other Human Effects

The same areas in Utah that are subjected to unauthorized OHV use are also used for target shooting and trash dumping. Evidence of both of these activities was present in Utah during the February 2008 visit. There was one large

appliance, which had obviously been used for target practice, dumped near the population (Service 2008a, p. 1). People engaging in target shooting near the population degrade habitat by trampling the soil and plants, and by driving vehicles on the habitat to access areas for target shooting. The unauthorized use of BLM lands for these activities can contribute to the degradation of habitat for the Gierisch mallow by causing the same direct and indirect effects described above for OHV use. It is also possible that trash dumping can lead to soil contamination, which would most likely not be beneficial to the species. The full extent of damage to soils may not be evident until years or even decades after the original disturbance (Vollmer *et al.* 1976, p. 115). We did not observe these activities near the Arizona populations. Similar to the effects of unauthorized OHV use, we consider illegal trash dumping and impacts associated with target shooting to be a threat to the species that has moderate impacts to this population in Utah.

Nonnative, Invasive Species

The spread of nonnative, invasive species is considered the second largest threat to imperiled plants in the United States (Wilcove *et al.* 1998, p. 608). Invasive plants—specifically exotic annuals—negatively affect native vegetation, including rare plants. One of the most substantial effects is the change in vegetation fuel properties that, in turn, alter fire frequency, intensity, extent, type, and seasonality (Menakis *et al.* 2003, pp. 282–283; Brooks *et al.* 2004, p. 677; McKenzie *et al.* 2004, p. 898). Shortened fire return intervals make it difficult for native plants to reestablish or compete with invasive plants (D'Antonio and Vitousek 1992, p. 73).

Invasive plants can exclude native plants and alter pollinator behaviors (D'Antonio and Vitousek 1992, pp. 74–75; DiTomaso 2000, p. 257; Mooney and Cleland 2001, p. 5449; Levine *et al.* 2003, p. 776; Traveset and Richardson 2006, pp. 211–213). For example, cheatgrass and red brome outcompete native species for soil nutrients and water (Melgoza *et al.* 1990, pp. 9–10; Aguirre and Johnson 1991, pp. 352–353; Brooks 2000, p. 92), as well as modify the activity of pollinators by producing different nectar from native species (Levine *et al.* 2003, p. 776) or introducing nonnative pollinators (Traveset and Richardson 2006, pp. 208–209). Introduction of nonnative pollinators or production of different nectar can lead to disruption of normal pollinator interactions for the Gierisch mallow.

Cheatgrass and red brome are particularly problematic nonnative, invasive annual grasses in the intermountain west. If already present in the vegetative community, cheatgrass and red brome increase in abundance after a wildfire, increasing the chance for more frequent fires (D'Antonio and Vitousek 1992, pp. 74–75; Brooks 2000, p. 92). In addition, cheatgrass invades areas in response to surface disturbances (Hobbs 1989, pp. 389, 393, 395, 398; Rejmanek 1989, pp. 381–383; Hobbs and Huenneke 1992, pp. 324–325, 329, 330; Evans *et al.* 2001, p. 1308). Cheatgrass and red brome are likely to increase due to climate change (see ''Climate Change and Drought'' discussion, below, under Factor E) because invasive annuals increase biomass and seed production at elevated levels of carbon dioxide (Mayeux *et al.* 1994, p. 98; Smith *et al.* 2000, pp. 80–81; Ziska *et al. 2*005, p. 1328).

Although cheatgrass and red brome both occur in close proximity to Gierisch mallow habitat, red brome is more prevalent (Roaque 2012b, p. 1). As previously described above, both cheatgrass and red brome tend to not grow well in gypsum outcrops in normal (dry) rainfall years; however, they can be abundant in the Gierisch mallow habitat during wet years. Red brome has also been documented in similar gypsiferous soils near the Gierisch mallow populations after wet years and can provide enough fuel continuity to aid in the spread of fire across the landscape in these areas (Roth 2012, entire). As we stated above, we do not anticipate a high degree of surface disturbances in the Gierisch mallow habitats in the near future from livestock grazing except during drought years; however, increased mining in Arizona and unauthorized OHV use, target shooting, and trash dumping in the Utah population of the Gierisch mallow may lead to significant amounts of surface disturbance, providing conditions that allow red brome to expand into and increase in density within Gierisch mallow habitat.

Invasions of annual, nonnative species, such as cheatgrass, are well documented to contribute to increased fire frequencies (Brooks and Pyke 2002, p. 5; Grace *et al.* 2002, p. 43; Brooks *et al.* 2003, pp. 4, 13, 15). The disturbance caused by increased fire frequencies creates favorable conditions for increased invasion by cheatgrass. The end result is a downward spiral where an increase in invasive species results in more fires, more fires create more disturbances, and more disturbances lead to increased densities of invasive species. The risk of fire is expected to increase from 46 to 100 percent when the cover of cheatgrass increases from 12 to 45 percent or more (Link *et al.* 2006, p. 116). The invasion of red brome, another nonnative grass, into the Mojave Desert of the Intermountain West poses similar threats to fire regimes, native plants, and other federally protected species (Brooks *et al.* 2004, pp. 677–678). Brooks (1999, p. 16) also found that high interspace biomass of red brome and cheatgrass resulted in greater fire danger in the Mojave Desert. Brooks (1999, p. 18) goes on to state that the ecological effects of cheatgrass- and red brome-driven fires are significant because of their intensity and consumption of perennial shrubs.

In the absence of cheatgrass and red brome, the Gierisch mallow grows in sparsely vegetated communities unlikely to carry fires (see *Biology, Habitat, and the Current Range* section, above). Thus, this species is unlikely to be adapted to survive high frequency fires. As described in the *Biology, Habitat, and the Current Range* section, the total range of this species covers approximately 186 ha (460 ac), and each of the 18 populations occupies a relatively small area, ranging between 0.003 ha (0.01 ac) and 38.12 ha (94.36 ac). A range fire could easily impact or eliminate one or all populations and degrade Gierisch mallow habitat to the point that it will no longer be suitable for the plant. The loss of one population and associated suitable habitat would be a significant loss to the species. Therefore, the potential expansion of invasive species and associated increase in fire frequency and intensity is a significant threat to the species, especially when considering the limited distribution of the species and the high potential of the Gierisch mallow population extinctions.

In summary, invasive species can impact plant communities by increasing fire frequencies, outcompeting native species, and altering pollinator behaviors. Although invasive species do not occur in high densities in Gierisch mallow habitat during normal (dry) rainfall years, nonnative, invasive species, especially red brome, can be very abundant in wet rainfall years. Given the ubiquitous nature of cheatgrass and red brome in the Intermountain West and their ability to rapidly invade dryland ecosystems (Mack 1981, p. 145; Mack and Pyke, 1983, p. 88; Thill *et al.* 1984, p. 10), we expect these nonnative species to increase in the future in response to surface disturbances from increased mining activities, recreation activities,

and global climate change (see ''Climate Change and Drought,'' below). An increase in cheatgrass and red brome is expected to increase the frequency of fires in Gierisch mallow habitat, and the species is unlikely to survive increased wildfires due to its small population sizes and the anticipated habitat degradation. Therefore, we determine that nonnative, invasive species and associated wildfires constitute a threat to Gierisch mallow and its habitat that may have a significant population-level effect on the species.

Summary of Factor A

Based on our evaluation of the best available scientific information, we conclude that the present and future destruction and modification of the habitat for the Gierisch mallow is a threat that has significant impacts to the speceis. Destruction and modification of habitat for the Gierisch mallow are anticipated to result in a significant decrease in both the range of the species and the size of the population of the species.

Mining activities impacted Gierisch mallow habitat in the past and will continue to be a threat in the future to the species' habitat throughout its range. All of the populations and most of the habitat are located on BLM and ASLD lands, which have an extensive history of, and recent successful exploration activities for, gypsum mining. A small amount of Gierisch mallow habitat (approximately 68 ha (167 ac)) occurs on SITLA managed lands; however no mining is proposed on these lands. Two of the 18 populations are located in the immediate vicinity of gypsum mining, including the Black Rock Gypsum Mine, which has an approved Mining Plan of Operation to expand into the largest Gierisch mallow population. Gypsum mining is expected to continue and expand in the near future (Cox 2011b, p. 1; Dixon 2012, p. 1). Considering the small area of occupied habitat immediately adjacent to existing gypsum mines, anticipated future mining will result in the loss of habitat for these populations in the future, and these two populations comprise approximately 46 percent of the entire species' distribution.

Although livestock do not typically eat Gierisch mallow, livestock grazing can affect Gierisch mallow habitat more significantly during drought years, as livestock move into the Gierisch mallow habitat searching for forage. The consumption of Gierisch mallow that has been documented increases the significance of the effects of livestock grazing when grazing occurs during the reproductive period for the pant in the spring. Additionally, livestock have been implicated in spreading nonnative, invasive species, such as red brome and cheatgrass, although we do not know the extent to which livestock contribute to the spread of these two nonnative grasses.

Red brome and cheatgrass are documented to occur in all 18 populations of the Gierisch mallow, although mostly after wet years. The threat of fire caused by annual invasions of nonnative species is exacerbated by mining activities, livestock grazing, and recreation activities. Therefore, we conclude that Gierisch mallow and its habitat face significant threats as a result of habitat loss and modification.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Gierisch mallow is not typically a plant of horticultural interest; however, we do have information regarding possible seed collection from wild plants on BLM and ASLD department lands for commercial sale (Roth 2011, p. 1; Frates 2012, pers. comm.). Collection of seeds from both BLM and ASLD is prohibited, and only the BLM offers a special research permit to collect seeds of listed species, as long as the seed collection does not violate the Act. Each respective land management agency referred the matter to its law enforcement branches. Because collection is restricted, and collection permits are only issued for scientific research or educational purposes by the Arizona Department of Agriculture (Austin 2012, p. 1), we do not expect collection to be a regular occurrence. See Factor D discussion, below, for a complete description of when permits are issued for collection of the Gierisch mallow. We are not aware of any other instances when the Gierisch mallow has been collected from the wild other than as a voucher specimen (specimen collected for an herbarium) (Atwood and Welsh 2002, p. 161). Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the Gierisch mallow now, and we have no information to indicate that it will become a threat in the future.

*C. Disease or Predation*

The flowering stalks of the Gierisch mallow are eaten by livestock. All of the Gierisch mallow populations on BLM lands are within grazing allotments. Herbivory has been documented by a BLM ecologist (Service 2008a, p. 1) and Atwood (2008, p. 1). Hughes has found that the mallow is eaten during drought years, when other forage is reduced or unavailable. The plant is also grazed during non-drought times, but not as heavily. The Gierisch mallow plants located near water sources (stock tanks and drinkers) are also heavily browsed (Hughes 2008b, p. 1) because livestock tend to congregate near sources of water. When Atwood (2008, p. 1) was surveying the populations to collect fruit of the Gierisch mallow during drought years, Atwood was unable to locate any fruit because all of the flowering stalks had been consumed by livestock. The effect of sporadic grazing of plants is unknown, but persistent grazing can reduce the reproductive output of the plants, potentially reducing the size of the smaller populations, especially during drought years and during the reproductive period in the spring. Livestock herbivory during the reproductive period can lead to the flowering stalks being eaten, thus preventing adult Gierisch mallow plants from reproducing. As previously described under Factor A, livestock do not typically spend significant amounts of time in Gierisch mallow habitat, due to the hillsides and steep slopes that the Gierisch mallow typically inhabits, although livestock will enter into Gierisch mallow habitat during drought periods and have been documented on steep slopes in similar habitats (DeFalco 2012, pers. comm.).

Herbivory from livestock is not a threat that has significant impacts because of the steepness of the terrain on which the plant is typically located and because the herbivory that does occur is mostly limited to drought years when the plant is not overly abundant. Although herbivory is likely to continue to some degree, especially during drought years, recruitment from the seed bank has been documented in recent years, indicating that herbivory by livestock is not likely to diminish the overall fitness and reproductive ability of the larger Gierisch mallow populations. Smaller populations of the Gierisch mallow are likely to be more susceptible to the effects of herbivory during drought years or during the reproductive period, especially when the flowering stalks are consumed during the reproductive period.

We have no information that disease is affecting the plants. Therefore, based on the best available information, we conclude that disease is not a threat to the Gierisch mallow and that predation (herbivory, along with some related trampling) is a threat that has moderate impacts only during drought years or during the reproductive period.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address or alleviate the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, plans, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Gierisch mallow.

State Regulations

Approximately 13 percent of known populations are located on ASLD lands in Arizona mining claims. There are no laws protecting the Gierisch mallow's habitat on State or private lands in Arizona. This species is currently protected by the Arizona Native Plant Act (ANPA). Since it became a candidate species in 2008, Arizona protects the Gierisch mallow as ''Highly Safeguarded.'' Plants in the ''Highly Safeguarded'' category under the ANPA include, ''plants resident to this State and listed as endangered, threatened, or category 1 in the Federal endangered species act of 1973'' (ANPA 1997, p. 4). The ANPA controls collecting, and limited scientific collection of ''Highly Safeguarded'' species is allowed for research and educational purposes (Austin 2012, p. 1), but the ANPA provides no protection for plant habitat. Private landowners are required to obtain a salvage permit to remove plants protected by the ANPA; however, there are no known private lands containing the Gierisch mallow. Furthermore, seed collection on ASLD lands is prohibited, as described above under Factor B, although there are no ASLD regulations protecting habitat for the Gierisch mallow. While the ANPA may be effectively protecting the species from direct threats, it is not designed to protect the species' habitat.

No Gierisch mallow populations are known to occur on the approximately 68 ha (167 ac) of SITLA lands that contain habitat for the species; however, there are no laws protecting plants or their habitat on SITLA lands in Utah.

In addition to the Black Rock Gypsum Mine on BLM lands in Arizona, discussed below, the Georgia-Pacific Mine on ASLD land is in close proximity to a large Gierisch mallow population. The ASLD has strict reclamation provisions and bonding requirements when they approve a Mining Plan of Operation; however, any decision that the ASLD makes on whether or not to lease land is based strictly on the benefit of the State Trust. The ASLD would not deny a mine, or any other project, based on the presence of an endangered or threatened species; however, they can have stipulations written into the ASLD lease or the mining company's reclamation plan that would require the mining company to make allowances for federally listed species (Dixon 2012, p. 1). With listed plants, these stipulations can include seed collection or transplanting plants from the footprint of the mine; however, because the Gierisch mallow is not currently listed, the ASLD does not currently have to include these stipulations in reclamation plans. Because the ASLD does not have to require mitigation stipulations to protect the Gierisch mallow or its habitat, we conclude that this regulatory mechanism is insufficient to protect the Gierisch mallow from threats to its habitat associated with mining on ASLD lands.

Federal Regulations

Mining Activities on BLM Lands

We have previously identified habitat loss associated with gypsum mining as a potential threat to the species. On BLM-managed lands, this mining occurs pursuant to the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), which was enacted to promote exploration and development of domestic mineral resources, as well as the settlement of the western United States. It permits U.S. citizens and businesses to freely prospect hardrock (locatable) minerals and, if a valuable deposit is found, file a claim giving them the right to use the land for mining activities and sell the minerals extracted, without having to pay the Federal Government any holding fees or royalties (GAO 1989, p. 2). Gypsum is frequently mined as a locatable mineral, and gypsum mining is, therefore, subject to the Mining Law of 1872. The BLM implements the Mining Law through Federal regulations at 43 CFR 3800.

The operators of mining claims on BLM lands must reclaim disturbed areas (Cox 2012, p. 1). The BLM's regulations also require the mitigation of mining operations so that operations do not cause unnecessary or undue degradation of public lands. Unnecessary or undue degradation is generally referred to as ''harm to the environment that is either unnecessary to a given project or violates specified environmental protection statutes'' (USLegal, 2012, p. 1). Furthermore, it is unclear what specific activities would constitute unnecessary or undue degradation in relation to the Gierisch mallow and its habitat.

The Gierisch mallow is listed as a BLM sensitive species in both Arizona and Utah. Sensitive species designation on BLM lands is afforded through the Special Status Species Management Policy Manual #6840 (BLM 2008B, entire), which states that on BLM-administered lands, the BLM shall manage Bureau sensitive species and their habitats to minimize or eliminate threats affecting the status of the species, or to improve the condition of the species' habitat (BLM 2008B, pp. 37–38).

The BLM's regulations do not prevent the Black Rock Gypsum Mine's expansion into Gierisch mallow habitat, but the BLM could require mitigation measures to prevent unnecessary or undue degradation from mining operations. For example, the BLM required seed collection of the Gierisch mallow by the mine operators to aid in reestablishing the species in reclaimed areas of the Black Rock Gypsum Mine in the recently approved expansion of the Black Rock Gypsum Mine.

The BLM has required seed collection as a result of these operations; however, we do not know if enough seeds can be collected to reestablish pre-mining population numbers in reclaimed areas. The ability to reestablish healthy populations in reclaimed areas is uncertain because the number of plants observed growing from the seed bank in reclaimed soils has decreased since they were first observed. Furthermore, we do not know the long-term viability of these plants or any plants grown from

collected seeds. Therefore, we find that the BLM's Federal regulatory measures are not adequate to address the loss of habitat caused by gypsum mining.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Small Population Size

As previously described (see the *Biology, Habitat, and the Current Range* section, above), the entire range of the Gierisch mallow is located in an area of less than 186 ha (460 ac) throughout Arizona and Utah. Within this range, each of the 18 individual populations' habitat areas is very small, ranging from 0.003 ha (0.01 ac) to 38.12 ha (94.36 ac). The Gierisch mallow can be dominant in small areas of suitable habitat, containing thousands of individuals. However, the small areas of occupation and the narrow overall range of the species make it highly susceptible to stochastic events that may lead to local extirpations.

Mining, or a single random event such as a wildfire (see Factor A), could extirpate an entire or substantial portion of a population given the small area of occupied habitat. Species with limited ranges and restricted habitat requirements also are more vulnerable to the effects of global climate change (see the ''Climate Change and Drought'' section, below; IPCC 2002, p. 22; Jump and Penuelas 2005, p. 1016; Maschinski *et al.* 2006, p. 226; Krause 2010, p. 79).

Overall, we consider small population size and restricted range intrinsic vulnerabilities to the Gierisch mallow that may not rise to the level of a threat on their own. However, the small population sizes and restricted range of this species increase the risk of extinction to the Gierisch mallow populations in conjunction with the effects of global climate change (see below) and the potential for stochastic extinction events such as mining and invasive species (Factor A). Therefore, we consider the small, localized population size to exacerbate the threats of mining, invasive species, and climate change to the species.

Climate Change and Drought

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Annual mean precipitation levels are expected to decrease in western North America and especially the southwestern States by mid-century (IPCC 2007, p. 8; Seager *et al.* 2007, p. 1181). Throughout the Gierisch mallow's range, precipitation is predicted to increase 10 to 15 percent in the winter, decrease 5 to 15 percent in spring and summer, and remain unchanged in the fall under the highest emissions scenario (Karl *et al.* 2009, p. 29). The levels of aridity of recent drought conditions and perhaps those of the 1950s drought years will become the new climatology for the southwestern United States (Seager *et al.* 2007, p. 1181). Much of the Southwest remains in a 10-year drought, which is considered the most severe western drought of the last 110 years (Karl *et al.* 2009, p. 130). Although droughts occur more frequently in areas with minimal precipitation, even a slight reduction from normal precipitation may lead to severe reductions in plant production (Herbel *et al.* 1972, p. 1084). Therefore, the smallest change in environmental factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

As discussed above, the Gierisch mallow has a limited distribution, and populations are localized and small. In addition, these populations are restricted to very specific soil types. Global climate change exacerbates the risk of extinction for species that are already vulnerable due to low population numbers and restricted habitat requirements. Predicted changes in climatic conditions include increases in temperature, decreases in rainfall, and increases in atmospheric carbon dioxide in the American Southwest (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Although we have no information on how the Gierisch mallow will respond to effects related to climate change, persistent or prolonged drought conditions are likely to reduce the frequency and duration of flowering and germination events, lower the recruitment of individual plants, compromise the viability of populations, and impact pollinator availability as pollinators have been documented to become locally extinct during periods of drought (Tilman and El Haddi 1992, p. 263; Harrison 2001, p. 64). The smallest change in environmental factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

Drought conditions led to a noticeable decline in survival, vigor, and reproductive output of other rare and endangered plants in the Southwest during the drought years of 2001 through 2004 (Anderton 2002, p. 1; Van Buren and Harper 2002, p. 3; Van Buren and Harper 2004, entire; Hughes 2005, entire; Clark and Clark 2007, p. 6; Roth 2008a, entire; Roth 2008b, pp. 3–4). Similar responses are anticipated to adversely affect the long-term persistence of the Gierisch mallow. Periods of prolonged drought, especially with decreased winter rains essential to the survival and persistence of the Gierisch mallow, are likely to decrease the ability of this plant to produce viable seeds. Additionally, prolonged drought will likely diminish the ability of seeds currently in the seed bank to produce viable plants and for seedlings to survive to maturity.

Climate change is expected to increase levels of carbon dioxide (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Elevated levels of carbon dioxide lead to increased invasive annual plant biomass, invasive seed production, and pest outbreaks (Smith *et al.* 2000, pp. 80–81; IPCC 2002, pp. 18, 32; Ziska *et al.* 2005, p. 1328), and will put additional stressors on rare plants already suffering from the effects of elevated temperatures and drought. This is important to note with regards to the Gierisch mallow because increases in nonnative, invasive plants, including increased seed production, are anticipated to increase both the frequency and intensity of wildfires as described above in ''Nonnative, Invasive Species'' under Factor A. Further, these additional stressors associated with increased carbon dioxide are likely to increase the competition for resources between the Gierisch mallow and nonnative, invasive plant species.

The actual extent to which climate change itself will impact the Gierisch

mallow is unclear, mostly because we do not have long-term demographic information that would allow us to predict the species' responses to changes in environmental conditions, including prolonged drought. Any predictions at this point on how climate change would affect this species would be speculative. However, as previously described, mining and recreation activities are threats (see ''Mining'' and ''Recreation Activities'' sections under Factor A, above), which will likely result in the loss of large numbers of individuals and maybe even entire populations. Increased surface disturbances associated with mining and recreation activities also will likely increase the extent and densities of nonnative, invasive species and with it the frequencies of fires (see *''*Nonnative, Invasive Species'' section under Factor A, above). Given the cumulative effects of the potential population reduction and habitat loss (of already small populations) associated with mining, recreation, invasive species, and fire, we are concerned about the impacts of future climate change to the Gierisch mallow.

In summary, the future effects of global climate change and drought on the Gierisch mallow are unclear. However, because of the threats of mining, grazing during drought years, recreation, and nonnative species, the cumulative effects of climate change and drought may be of concern for this species in the future. At this time, we believe that the state of knowledge concerning the localized effects of climate change and drought is too speculative to determine whether climate change and drought are a threat to these species in the future. However, we will continue to assess the potential threats of climate change and drought as additional scientific information becomes available.

Summary of Factor E

We assessed the potential risks of small population size to the Gierisch mallow. The Gierisch mallow has a highly restricted distribution and exists in 18 populations scattered over an area that covers approximately 460 ac (186 ha). Individual populations occupy very small areas with large densities of plants. We conclude that stochastic events could impact a significant portion of a population. Small populations that are restricted by habitat requirements also are more vulnerable to the effects of climate change, such as prolonged droughts and increased fire frequencies. Although small population size and climate change make the species intrinsically more vulnerable, we are uncertain whether they would rise to the level of threat by themselves. However, when combined with the threats listed under Factor A (mining operations; livestock grazing; recreation activities; and nonnative, invasive species), and the lack of existing regulatory mechanisms to alleviate those threats, the small population size and restricted range of the Gierisch mallow are likely to significantly increase the level of the above-mentioned threats.

**Determination**

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Gierisch mallow. We find that the species is in danger of extinction due to the current and ongoing modification and destruction of its habitat and range (Factor A) from the ongoing and future gypsum mining operations, livestock grazing, recreation activities, and nonnative, invasive species. The most significant threat to the Gierisch mallow is the ongoing and future gypsum mining that is likely to remove approximately 46 percent of the total population of the Gierisch mallow. We did not find any significant threats to the species under Factor B. We found that predation (herbivory) during drought years and during the reproductive period to be a moderate threat (Factor C). We also found that existing regulatory mechanisms that could provide protection to the Gierisch mallow through mining operations management by the BLM and ASLD are inadequate to protect the species (Factor D) from existing and future threats. Finally, the small population size and restricted range of this species also puts it at a heightened risk of extinction (Factor E), due to the threats that have significant impacts described above in Factors A, C, and D.

The threats acting upon the populations of Gierisch mallow are intensified because of the species' small population size and limited range, resulting in a high likelihood of extinction for this species. The Gierisch mallow is a narrow endemic species with a very restricted range; the small areas of occupied habitat combined with the species' strong association with gypsum soils makes the species highly vulnerable to habitat destruction or modification through mining-related and recreation activities, as well as livestock grazing during drought and random extinction events, including invasive species (and the inherent risk of increased fires) and the potential future effects of global climate change (Factor A). Furthermore, two of the largest populations of the Gierisch mallow and its habitat will be completely removed by mining operations. Both of the mines have approved Mining Plans of Operations and permits from the respective land management agencies (BLM and ASLD); thus mining can occur at any time. Even though these mining operations are not currently active, when they begin operation there will be no requirement for notification of land-disturbing activities that would impact or completely remove these populations. As previously stated, operation and expansion of these two mines is anticipated to extirpate approximately 46 percent of known Gierisch mallow plants, which are located in two populations in Arizona. The existing regulatory mechanisms are inadequate to protect the Gierisch mallow from the primary threat of mining, particularly because the BLM has approved mining operations with mitigation that we consider ineffective at reducing threats. Furthermore, the ASLD does not consider the presence of a listed species when approving a Mining Plan of Operation; however, they can have stipulations written into the ASLD lease or the mining company's reclamation plan that would require the mining company to make allowances for federally listed species (Dixon 2012, p. 1). The ASLD has the ability to require mitigation for the presence of a federally listed species; however, there is no current requirement because the Gierisch mallow is not federally listed. We consider this regulatory mechanism to be inadequate as well. The inadequacy of regulatory mechanisms (Factor D), combined with the expected turnaround of the housing market (gypsum is an important component of sheet rock for housing construction), poses a serious threat to the continued existence of the Gierisch mallow. The small, reduced range (Factor E) of the Gierisch mallow also puts it at a heightened risk of extinction.

The elevated risk of extinction of the Gierisch mallow is a result of the cumulative stressors on the species and its habitat. For example, gypsum mining is anticipated to extirpate more than half of the known population of the Gierisch mallow, especially since the existing regulations cannot sufficiently mitigate the effects of gypsum mining in Gierisch mallow habitat. Livestock grazing throughout the range of the Gierisch mallow may affect the population viability of the remaining populations if periods of drought continue and livestock continue to

consume the Gierisch mallow, including seedlings, during drought periods. Additionally, the risk of increased wildfire frequency and intensity resulting from increased nonnative, invasive species has the potential to extirpate several populations and, possibly, contribute to the extinction of the species. Climate change is anticipated to increase the drought periods and contribute to the spread of nonnative, invasive species as well. All of these factors combined heighten the risk of extinction and lead to our finding that the Gierisch mallow is in danger of extinction and warrants listing as an endangered species.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' The identified threats are currently impacting the species, and will continue to do so, or increase, into the foreseeable future. Therefore, the Gierisch mallow does not meet the definition of a threatened species under the Act. We find that the Gierisch mallow is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we finalize the listing of the Gierisch mallow as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Gierisch mallow being listed in this rule is highly restricted in its range and the threats occur throughout its range. Therefore, we assessed the status of the species throughout its entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to the species throughout its entire range.

Listing the Gierisch mallow as a threatened species is not the appropriate determination because the ongoing threats described above are severe enough to increase the immediate risk of extinction. The gypsum mining operations are anticipated to resume full operations and expansions in as few as 3 to 10 years, although the mining operations could occur sooner. Grazing is ongoing throughout the range of the Gierisch mallow, and climate change is anticipated to cause more periods of drought, when livestock graze more heavily on the Gierisch mallow. Additionally, red brome and cheatgrass are abundant throughout the area, and while they are typically more abundant in the Gierisch mallow habitat after wet years, recent wet years have left an abundant crop of red brome in Gierisch mallow habitat. Wildfires could occur at any time as a result of the proliferation of these invasive species. All of these factors combined lead us to conclude that the threat of extinction is high and immediate, thus warranting a determination of an endangered species rather than a threatened species for the Gierisch mallow.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan would be available on our Web site (*http://www.fws.gov/endangered*), or from our Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Once this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the States of Arizona and Utah would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Gierisch mallow. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to

jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both, as described in the preceding paragraph, include management and any other landscape-altering activities on Federal lands administered by the BLM, such as mining operations, livestock grazing, and issuing special use permits.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

This species is currently protected by the Arizona Native Plant Act (ANPA). Since it became a candidate species in 2008, Arizona protects the Gierisch mallow as ''Highly Safeguarded.'' Plants in the ''Highly Safeguarded'' category under the ANPA include ''plants resident to this State and listed as endangered, threatened, or category 1 in the Federal endangered species act of 1973'' (ANPA 1997, p. 4). The ANPA controls collecting, and limited scientific collection of ''Highly Safeguarded'' species is allowed (Austin 2012, p. 1), but the ANPA provides no protection for plant habitat. Protection under the Act as an endangered species will, therefore, offer additional protections to this species.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: for scientific purposes or for enhancement of propagation or survival of the species.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of species being listed. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive: Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Office (see **ADDRESSES**). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, Southwest Regional Office, P.O. Box 1306, Albuquerque, NM, 87103–1306; telephone (505) 248–6911; facsimile (505) 248–6915.

## Required Determinations

*National Environmental Policy Act*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0049 or upon request from the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section).

## Authors

The primary authors of this document are staff of the Arizona Ecological Services Office (see **ADDRESSES**).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for ''*Sphaeralcea gierischii*'', in alphabetical order under ''FLOWERING PLANTS'', to the List of Endangered and Threatened Plants, to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * * | * | * | * | * | * | |
| *Sphaeralcea gierischii* ..... | Gierisch mallow ..... | U.S.A (AZ, UT) | Malvaceae ... | E | 813 | 17.96(a) | NA |
| * | * * | * | * | * | * | * | |

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Dated: July 29, 2013.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–19386 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R2–ES–2013–0018; 4500030113]**

**RIN 1018–AZ46**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Sphaeralcea gierischii (Gierisch Mallow)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, designate critical habitat for *Sphaeralcea gierischii* (Gierisch mallow) under the Endangered Species Act of 1973, as amended (Act). The effect of this regulation is to designate critical habitat for Gierisch mallow under the Act. This final rule implements the Federal protections provided by the Act for this species.

**DATES:** This rule is effective on September 12, 2013.

**ADDRESSES:** This final rule, final economic analysis, and final environmental assessment are available on the Internet at *http://www.regulations.gov* and at *http://www.fws.gov/southwest/es/arizona/.* Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021; by telephone (602) 242–0210; or by facsimile (602) 242–2513.

The coordinates, or plot points, or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/southwest/es/arizona/,* and at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0018, and at the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602) 242–0210; or by facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

In this final rule, we refer to *Sphaeralcea gierischii* as Gierisch mallow.

Why we need to publish a rule. This is a final rule to designate critical habitat for the Gierisch mallow. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

Elsewhere in today's **Federal Register**, we list the Gierisch mallow as an endangered species. On August 17, 2012, we published in the **Federal Register** a proposed critical habitat designation for Gierisch mallow (77 FR 49894). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for Gierisch mallow. We are designating approximately 5,189 hectares (ha) (12,822 acres (ac)) as critical habitat in two units in both Mohave County, Arizona, and Washington County, Utah, as follows:

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR GIERISCH MALLOW

| Critical habitat unit | Federal | | State | | Totals |
|---|---|---|---|---|---|
| | Arizona | Utah | Arizona | Utah | |
| Unit 1. Starvation Point | 220 ha (544 ac) | 802 ha (1,982 ac) | 249 ha (615 ac) | 68 ha (167 ac) | 1,339 ha (3,309 ac) |
| Unit 2. Black Knolls | 3,586 ha (8,862 ac). | 0 | 263 ha (651 ac) | 0 | 3,850 ha (9,513 ac) |
| Totals | 3,806 ha (9,406 ac). | 802 ha (1,982 ac) | 512 ha (1,266 ac) | 68 ha (167 ac) | 5,189 ha (12,822 ac) |

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on March 28, 2013 (78 FR 18943), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final designation.

We have prepared an environmental assessment of the designation of critical habitat. In order to consider environmental impacts, we have prepared an assessment of the environmental impacts of the critical habitat designations and related factors. We announced the availability of the draft environmental assessment in the **Federal Register** on March 28, 2013 (78 FR 18943), allowing the public to provide comments on our assessment.

We have incorporated the comments and have completed the final environmental assessment concurrently with this final designation.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from three knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final designation. We also considered all comments and information we received during the comment period.

**Previous Federal Actions**

All previous Federal actions are described in the final rule to list the Gierisch mallow as an endangered species under the Act, which is published elsewhere in today's **Federal Register**.

**Summary of Comments and Responses**

*Peer Review*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals outside the Service with scientific expertise to review our technical assumptions, interpretations of biology, and use of ecological principles with respect to the Gierisch mallow. We received responses from three of the four peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding threats to Gierisch mallow. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are incorporated into the final rule as appropriate.

We requested written comments from the public on the proposed designation of critical habitat for the Gierisch mallow during two comment periods. The first comment period, which was associated with the publication of the proposed rule, opened on August 17, 2012 (77 FR 49894), and closed on October 16, 2012. The second comment period opened on March 28, 2013 (78 FR 18943), and closed on April 29, 2013. We also contacted appropriate Federal, State, and local agencies; scientific organizations; peer reviewers; and other interested parties and invited them to comment on the proposed rule, draft economic analysis, and draft environmental assessment during these comment periods. Newspaper notices inviting general public comment were published in the Kingman Daily Miner on September 12, 2012, and in the Saint George Spectrum on September 13, 2012. Additionally, letters were sent to stakeholders and special interest groups on September 12, 2012. We received no request for a public hearing.

During the first comment period, we received 19 comment letters directly addressing the proposed listing and critical habitat designation for the Gierisch mallow. During the second comment period, we received two comment letters addressing the proposed critical habitat. All substantive information provided during comment periods has either been incorporated directly into this final designation or is addressed below.

(1) *Comment:* The commenter noted that the draft environmental assessment states exclusion of the mine areas would provide an economic benefit to the community, while not resulting in the extinction of the species, owing to the protection and restoration measures already in place.

*Our Response:* Our draft environmental assessment presented three alternatives that were analyzed for their effects to the environment. One of those alternatives, Alternative C, looked at environmental effects associated with our proposed critical designation if we excluded the mining areas. The rationale for Alternative C was based on possible economic benefit to the community. Under section 4(b)(2) of the Act, we consider the probable economic impacts of specifying any particular area as critical habitat. Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the Gierisch mallow based on economic impacts. See the discussion under ''Exclusions Based on Economic Impacts.''

(2) *Comment:* One commenter stated that, as noted in the proposed rule, the Gierisch mallow is also protected under terms of the Arizona Native Plant Law, incorporated into their mining lease from the Arizona State land Department (ASLD), and by section 7(a)(1) of the Act, requiring the Secretary of the Interior (and the Bureau of Land Management (BLM)) to use her authorities, including leases on public lands, in furtherance of species protection.

*Our Response:* A species is not protected under section 7(a)(1) of the Act unless it is listed under the Act. (Elsewhere in today's **Federal Register**, we published a final rule to list the Gierisch mallow as an endangered species under the Act.) Section 7 of the Act applies to listed species and their habitats for projects having a Federal nexus (occurring on federal lands, having federal funding, or requiring a federal permit). Section 7 consultations do not apply to ASLD lands unless a Federal nexus is present.

(3) *Comment:* One commenter stated that the economic and environmental analyses have demonstrated conclusively that the plants are adequately protected through existing mechanisms, and that the economic benefits of excluding the mining areas from the critical habitat designation outweigh any environmental benefit from including them.

*Our Response:* The environmental assessment did not discuss the adequacy of existing mechanisms to protect the species in lieu of listing but instead compared a no action alternative, which includes Federal listing of the species, to one action alternative that includes critical habitat designation as described in the proposed rule and a second action alternative that includes designation of critical habitat, but with the mine areas excluded. The draft environmental assessment did not weigh economic benefits against environmental benefits for any alternative. The economic analysis did not discuss the adequacy of existing mechanisms to protect the Gierisch mallow nor did it discuss excluding any lands proposed for critical habitat designation. The economic analysis discussed the increased costs associated with designating critical habitat.

(4) *Comment:* The Service should exclude lands under lease by Georgia-Pacific or subject to its mining claims because of the economic impact.

*Our Response:* Currently, the land being leased by Georgia-Pacific is administered by the ASLD, and there is no Federal nexus. Additionally, according to the final economic analysis and its findings of baseline and incremental impacts, the main costs associated with the listing of the Gierisch mallow are attributable to consultation with the Service through section 7 of the Act. Therefore, there are no projected costs associated with designating critical habitat for the

Gierisch mallow on ASLD Lands. Because there are no projected costs associated with the mining operation on ASLD lands, beyond those attributed to consultation with the Service through section 7 of the Act, and because the final economic analysis has determined that Georgia-Pacific does not meet the small business standard, the Secretary of the Interior is not exercising her discretion to exclude these lands from critical habitat.

(5) *Comment:* One commenter asserts that impacts to gypsum mining on ASLD and BLM lands from the proposed rule should include not only the value of production foregone due to operational constraints imposed by the Service, but also lost wages, employment opportunities, royalties paid to Federal and State lessors, taxes, and the multiplier effect of these expenditures.

*Our Response:* As discussed in Chapter 4 of the draft economic analysis, there is no Federal nexus for gypsum mining on ASLD lands, and therefore section 7 consultation on these activities is not necessary and the level of mining is not expected to be affected. BLM is required to consult with the Service on mining activity occurring on BLM-managed lands. The final economic analysis includes two future consultations on mining activity on BLM-managed land and assumes that these consultations will not result in changes to the level of mining activity. The Service expects the most likely outcome of these consultations to include conservation measures such as land reclamation. As such, the draft economic analysis estimated the future cost of seed collection, transplanting, and propagation for the plant in areas where mining is expected to occur. As a reduction in future mining activity is not estimated, there are not expected to be resultant impacts on local employment or other economic factors.

(6) *Comment:* One commenter requests omission of misstated information in the draft economic analysis, specifically, the sentence in paragraph 178 reading: ''The current mining plans would allow gypsum deposits suitable for mallow habitat to remain on, at most, 15 acres of the 400-acre lease area.'' According to the commenter, the lessee would be responsible for reclamation of the entire site.

*Our Response:* This sentence has been omitted in the final economic analysis and the estimated baseline costs have been revised throughout the report to reflect this change in the area that requires reclamation. Estimated reclamation costs increase from $77,000 to $80,000 as a result of this change.

(7) *Comment:* One commenter provides new information on potential future gypsum mining activities on BLM lands and the predicted value of mining claims as it relates to the expected gypsum deposits in those claims.

*Our Response:* A formal consultation on these mining activities and its associated cost has been added to the final economic analysis. In addition, the information regarding the value of mining claims has been included in the final economic analysis for context.

(8) *Comment:* Critical habitat increases threats to private land because management of critical habitat promotes weeds and fires.

*Our Response:* Designation of areas as critical habitat does not require specific management actions in those areas. In the preamble of this rule, as well as in the August 17, 2012, proposed rule (77 FR 49894), the description of each unit within our critical habitat designation only identifies special management considerations or protection that may be needed to maintain the primary constituent elements (PCEs) necessary for Gierisch mallow. Further, we did not recommend any management that would be expected to lead to weeds and fires. The identification of special management considerations or protection does not mandate such measures take place.

(9) *Comment:* We received several comments stating that the area proposed for designation as critical habitat was too large and not necessary to protect the species.

*Our Response:* Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The areas we are designating as critical habitat for the Gierisch mallow include all areas that contain the physical or biological features, such as gypsum soils, pollinators, pollinator habitat, native vegetation, and areas free of nonnative vegetation, that are essential to the conservation and survival of the Gierisch mallow. Although the Gierisch mallow populations occur on less than approximately 186 ha (460 ac), it is important to protect those gypsum soils that include pollinator habitat and provide opportunities to aid in the recovery of the species.

(10) *Comment:* The Service should recommend excluding livestock from critical habitat through fencing exclosures.

*Our Response:* Please refer to the seasonal use suggestions in the *Special Management Considerations or Protection* section. Livestock grazing is not the most serious threat. We know that livestock trample and eat plants; however, the plants have been documented to recover from herbivory and trampling. It is more important to reduce livestock herbivory during the flowering and seeding period so that plants will have the opportunity to reproduce and contribute to the recovery of the species. This can be accomplished through various management actions, including, but not limited to, seasonal rotations for pastures, reducing stocking rates, or removing livestock completely during drought years. Some allotments currently have seasonal rotations or deferred use where pastures are rested from grazing, thereby allowing the plants and PCEs of critical habitat sufficient recovery. Based on what we know today, permanently excluding livestock grazing from critical habitat is not necessary.

**Summary of Changes From Proposed Rule**

The most significant changes between the August 17, 2012, proposed rule (77 FR 49894) and this final rule are changes to the primary constituent elements (PCEs) for the Gierisch mallow and the addition of discussions regarding land managed by the State of Utah School and Institutional Trust Land Administration (SITLA). We received information related to Gierisch mallow being associated with biological soil crusts within the gypsum soils. Because of this new information, we include biological soil crusts as a PCE for the Gierisch mallow. Additionally, 68 ha (167 ac) of Gierisch mallow habitat on SITLA land is included in our calculations. This area was included in our proposed rule within critical habitat Unit 1 and was included in our total proposed critical habitat acreage; however, we reevaluated land ownership for these 68 ha (167 ac) and verified that they are owned by SITLA rather than the BLM, and the BLM administers the grazing lease for these

lands. This final rule reflects this information. These are the only significant changes in this final rule.

**Critical Habitat**

*Prudency Determination*

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no indication that the Gierisch mallow is threatened by collection, and there are no likely increases in the degree of threats to the species if critical habitat is designated. This species is not the target of collection, and the areas we are designating either have restricted public access (mine sites) or are already readily open to the public (BLM land). None of the threats identified to the species are associated with human access to the sites, with the exception of the threats associated with recreational activities on BLM land. This threat, or any other identified threat, is not expected to increase as a result of critical habitat designation because the BLM cannot control unauthorized recreational activities, and the designation of critical habitat does not change the situation.

In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the Gierisch mallow include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur, because, for example, Federal agencies were not aware of the potential impacts of an action on the species; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments, or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to any of the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Gierisch mallow.

*Background*

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Gierisch mallow in this section of the final rule. For a complete description of the life history and habitat needs of the Gierisch mallow, see the final rule listing the Gierisch mallow as an endangered species, published elsewhere in today's **Federal Register**.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed (in this case, currently occupied areas) are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements (PCEs) are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed (in this case, outside currently occupied areas), upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

*Physical or Biological Features*

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the Gierisch mallow from studies of this species' habitat, ecology, and life history as described in the *Habitat and Life History* section of our final listing rule published elsewhere in today's **Federal Register** and in the information presented below. We have determined that the following physical or biological features are essential for the Gierisch mallow.

*Space for Individual and Population Growth and for Normal Behavior*

The Gierisch mallow has a limited distribution; it is only found in a small area in Utah and Arizona. Within these areas, the Gierisch mallow requires appropriate soils, associated formations, slope, drainage, and plant community types within the landscape to provide space for individual growth and to provide food, water, air, light, minerals, or other nutritional or physiological requirements. In both Arizona and Utah, the Gierisch mallow is found in gypsiferous outcrops of the Harrisburg Member of the Kaibab Formation. In Arizona, these sites may be affiliated with the following gypsiferous soil series:

- Nikey-Ruesh complex,
- Gypill-Hobog complex,
- Hobog-Tidwell complex,
- Hobog-Grapevine complex,
- Grapevine-Shelly complex,
- Hindu-Rock outcrop-Gypill complex,
- Cave-Harrisburg-Grapevine complex, and
- Grapevine-Hobcan complex (Service unpublished data).

Sites in Utah are most affiliated with the following soil series (Service unpublished data, 2012, p. 1):

- Badland
- Fluvaquents and Torrifluvents, and
- Riverwash.

The Gierisch mallow occurs at elevations from 821 to 1,148 meters (m) (2,694 to 3,766 feet (ft)) in Arizona, and from 755 to 861 m (2,477 to 2,825 ft) in Utah. We could not correlate the Gierisch mallow's occurrences to a specific range of slopes; therefore, topography is not considered to be an essential physical feature for this species (Service unpublished data, 2012).

The Gierisch mallow occurs in sparsely vegetated, warm desert communities. All occupied habitat throughout its range occurs within the landcover described as Mojave mid-elevation mixed desert scrub (NatureServe 2011, p. 2). This classification represents the extensive desert scrub in the transition zone above the *Larrea tridentata* (creosote)–*Ambrosia dumosa* (white bursage) desert scrub and below the lower montane woodlands from 700 to 1800 m (2,296 to 5,905 ft) that occur in the eastern and central Mojave Desert. The vegetation within this ecological system is quite variable. A list of common plants associated with the Gierisch mallow habitat is included in Table 2.

TABLE 2—VEGETATION ASSOCIATED WITH GIERISCH MALLOW HABITAT

[NatureServe 2011, p. 2]

| Codominant and diagnostic species | Woody plant species associates | Other common nonwoody species associates |
|---|---|---|
| *Coleogyne ramosissima* (blackbrush) | *Acacia greggii* (catclaw acacia) | *Achnatherum hymenoides* (Indian ricegrass). |
| *Eriogonum fasciculatum* (buckwheat) | *Ephedra nevadensis* (Nevada jointfir) | *Achnatherum speciosum* (desert needlegrass). |
| *Ephedra nevadensis* (Nevada jointfir) | *Ephedra torreyana* (desert Mormon tea) | *Muhlenbergia porteri* (bush muhly). |
| *Grayia spinosa* (spiny hopsage) | *Encelia farinosa* (brittlebush) | *Eriogonum* spp. (various annual buckwheats). |
| | *Purshia stansburiana* (Stansbury cliffrose) | *Pleuraphis jamesii* (James' galleta). |
| | *Gutierrezia sarothrae* (broom snakeweed) | *Poa secunda* (Sandberg bluegrass). |

Depending on the moisture regime, the Gierisch mallow also can be associated with native annuals that are often ephemeral (seen only in the spring) and, like many Mohave Desert plant species, seasonally abundant based on climatic conditions. Gierisch mallow also appears to be associated with biologic soil crusts (Frates 2012, pers. comm.). Biological soil crusts provide fixed carbon on sparsely vegetated soils. Carbon contributed by these organisms helps keep plant interspaces fertile and aids in supporting other microbial populations (Beymer and Klopatek 1991 in Floyd *et al.* 2003, p. 1704). In desert shrub and grassland communities that support few nitrogen-fixing plants, biotic crusts can be the dominant source of nitrogen (Rychert *et al.* 1978 and others in Floyd *et al.* 2003, p. 1704). Additionally, soil crusts stabilize soils, help to retain moisture, and provide seed-germination sites. Soil crusts are effective in capturing wind-borne dust deposits, and have been documented contributing to a 2- to 13-fold increase in nutrients in southeastern Utah (Reynolds *et al.* 2001 in Floyd *et al.* 2003, p. 1704). The presence of soil crusts generally increases the amount and depth of rainfall infiltration (Loope and Gifford 1972 and others in Floyd *et al.* 2003, p. 1704).

Therefore, based on the information above, we identify gypsum soils with biological soil crusts found in the Harrisburg Member of the Kaibab Formation from 755 to 1,148 m (2,477 to 3,766 ft) and with the appropriate native vegetation communities to be an essential physical or biological feature for this species.

*Sites for Reproduction, Germination, Seed Dispersal or Pollination*

The Gierisch mallow is a native species of sparsely vegetated, warm desert communities. Although we do not know how the species is pollinated, other species of the genus *Sphaeralcea* (globemallows) are pollinated by *Diadasia diminuta* (globemallow bee), which specializes in pollinating plants of this genus. Globemallow bees are considered important pollinators for globemallows (Tepedino 2010, p. 2). These solitary bees, as well as other *Diadasia* species, are known to occur within the range of the Gierisch mallow (Sipes and Tepedino 2005, pp. 490–491; Sipes and Wolf 2001, pp. 146–147), so it is reasonable to assume that they are potential pollinators of the Gierisch mallow and other associated vegetation in the surrounding community. The globemallow bee, along with other solitary bees, nest in the ground, and nests are commonly found in partially compacted soil along the margins of dirt roads in the western United States (Tepedino 2010, p. 1). Prior to the proliferation of roads, it is possible that the bees nested in soils compacted by herd animals or trails (Esque 2012, pers. comm.). It is important to protect those nesting sites and associated natural habitat for the globemallow bee and other potential pollinators.

Natural habitat for the globemallow bee and other potential pollinators includes those appropriate vegetation communities described above in Table 2. The lack of favorable natural habitat can negatively influence pollination productivity (Kremen *et al.* 2004, pp. 1116–1117). Sites for the Gierisch mallow's reproduction, germination, and seed dispersal, and pollination providers are found within the communities described above. Because the Gierisch mallow is potentially pollinated by globemallow bees and other insects, the presence of pollinator populations is essential to the conservation of the species. Preservation of the mix of species and interspecific interactions they encompass greatly improves the chances for survival of rare species in their original location and habitat (Tepedino *et al.* 1996, p. 245). Redundancy of pollinator species is important because a pollinator species may be abundant one year and less so the next year. Maintaining a full suite of pollinators allows for the likelihood that another pollinator species will stand in for a less abundant one, and is essential in assuring adequate pollination.

Bees have a limited foraging range strongly correlated to body size (Greenleaf, 2005, p. 17; Steffan-Dewenter and Tscharntke 1999, pp. 434–435). Fragmentation of habitat can result in isolating plants from pollinator nesting sites. When the distance between plants and the natural habitats of pollinators increases, plant reproduction (as measured by mean seed set) can decline by as much as 50 percent in some plant species (Steffan-Dewenter and Tscharntke 1999, pp. 435–436). Optimal pollination occurs when there is abundance of individual pollinators and a species-rich bee community (Greenleaf 2005, p. 47).

Greenleaf (2005, p. 15) defines the typical homing distance of a bee taxon as the distance at which 50 percent of individual bees of that taxon have the ability to return to their home (nest, etc.). Solitary bees of various species have been documented to have foraging distances ranging from 150 m (492 ft) to 1,200 m (3,937 ft) (Gathmann and Tscharntke 2002, p. 760; Greenleaf *et al.* 2007, p. 593).

Therefore, based on the information above, we identify pollinators and associated appropriate native plant communities within 1,200 m (3,937 ft) of occupied sites to be an essential physical or biological feature for this species.

*Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species*

The species' known range has not contracted or expanded since the species was described in 2002. All sites contribute to ecological distribution and function for this species by providing representation across the species' limited current range. It is important to minimize surface-disturbing activities throughout the limited range of the Gierisch mallow. Surface-disturbing activities, such mining and recreation activities (off-highway vehicle (OHV) use and impacts related to target shooting), remove the unique soil composition and associated vegetation

communities that the Gierisch mallow needs.

Additionally, it is important to have areas in all the critical habitat units free of nonnative, invasive species, such as red brome (*bromus rubens*) and cheatgrass (*bromus tectorum*). Both cheatgrass and red brome tend to not grow well in gypsum outcrops in normal (dry) rainfall years (Roaque 2102b, p. 1); however, they can be abundant in Gierisch mallow habitat during wet years, providing continuous fuels in otherwise open spaces (Roth 2012, entire). Invasions of annual, nonnative species, such as cheatgrass, are well documented to contribute to increased fire frequencies (Brooks and Pyke 2002, p. 5; Grace *et al.* 2002, p. 43; Brooks *et al.* 2003, pp. 4, 13, 15). The disturbance caused by increased fire frequencies creates favorable conditions for increased invasion by cheatgrass. The end result is an increase in invasive species that results in more fires, more fires create more disturbances, and more disturbances lead to increased densities of invasive species. The risk of fire is expected to increase from 46 to 100 percent when the cover of cheatgrass increases from 12 to 45 percent or more (Link *et al.* 2006, p. 116). The invasion of red brome into the Mojave Desert of western North America poses similar threats to fire regimes, native plants, and other federally protected species (Brooks *et al.* 2004, pp. 677–678). Brooks (1999, p. 16) also found that high interspace biomass of red brome and cheatgrass resulted in greater fire danger in the Mojave Desert. Brooks (1999, p. 18) goes on to state that the ecological effects of cheatgrass- and red brome-driven fires are significant because of their intensity and consumption of perennial shrubs.

Imprecise forecasts of the impacts of climate change make the identification of areas that may become essential impractical at this time. Therefore, we have not identified additional areas outside those currently occupied where the species may move to, or be transplanted to, as a result of the impacts due to climate change.

Based on the information above, we identify areas free of disturbance and areas with low densities or absence of nonnative, invasive species to be an essential physical or biological feature for this species.

*Primary Constituent Elements for the Gierisch Mallow*

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Gierisch mallow in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Gierisch mallow are:

(1) Appropriate geological layers or gypsiferous soils, in the Harrisburg Member of the Kaibab Formation, that support individual Gierisch mallow plants or their habitat, within the elevation range of 775 to 1,148 m (2,477 to 3,766 ft). Appropriate soils are defined as:

- Badland,
- Fluvaquents and Torrifluvents,
- Riverwash,
- Cave-Harrisburg-Grapevine complex,
- Grapevine-Hobcan complex,
- Nikey-Ruesh complex,
- Gypill-Hobog complex,
- Hobog-Tidwell complex,
- Hobog-Grapevine complex,
- Grapevine-Shelly complex, and
- Hindu-Rock outcrop-Gypill complex.

(2) Appropriate Mojave desert scrub plant community and associated native species for the soil types at the sites listed in PCE 1.

(3) Biological soil crusts within the soil types described in PCE 1.

(4) The presence of insect visitors or pollinators, such as the globemallow bee and other solitary bees. To ensure the proper suite of pollinators are present, this includes habitat that provides nesting substrate for pollinators in the areas described in PCE 2.

(5) Areas free of disturbance and areas with low densities or absence of nonnative, invasive plants, such as red brome and cheatgrass.

With this designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of primary constituent elements sufficient to support the life-history processes of the species. All units designated as critical habitat are currently occupied by the Gierisch mallow and contain the primary constituent elements sufficient to support the life-history needs of the species.

*Special Management Considerations or Protection*

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the direct and indirect effects associated with the following threats: Habitat loss and degradation from mining operations; livestock grazing; recreation activities; and invasive plant species. Please refer to the final listing rule published elsewhere in today's **Federal Register** for a complete description of these threats.

Special management to protect the features essential to the conservation of the species from the effects of gypsum mining include creating managed plant preserves and open spaces, limiting disturbances to and within suitable habitats, and evaluating the need for (and conducting restoration or revegetation of) native plants in open spaces or plant preserves containing similar gypsum soils. Management activities that could ameliorate these threats include (but are not limited to) seed collection from the Gierisch mallow throughout its range, including those plants within the footprint of each mine. These seeds could be used to begin propagation studies to determine the long-term viability of plants growing in reclaimed soils. Additionally, these seeds could be used to begin propagating plants to be planted in other gypsum deposits and to augment existing populations. In addition to collecting seeds directly from plants, the seed bank could be collected from the top 1 inch of soil before the surface disturbance occurs as long as soils are properly handled during seed bank collection (Scoles-Sciulla and DeFalco 2009, entire). Special management may be necessary to protect features essential to the conservation of the Gierisch mallow from livestock grazing, including fencing populations; avoiding activities, such as water trough placement, that might concentrate livestock near or in occupied habitat; and removing livestock from critical habitat during the species' growing and reproductive seasons, especially during periods of flowering and fruiting. Special management that may be necessary to protect the features essential to the conservation of the

Gierisch mallow from recreational activities includes directing recreational use away from and outside of critical habitat, fencing small populations, removing or limiting access routes, ensuring land use practices do not disturb the hydrologic regime, and avoiding activities that might concentrate water flows or sediments into critical habitat. Additionally, threats related to both control of nonnative, invasive species and fire suppression and fire-related activities resulting from the spread of nonnative, invasive species include:

- Crushing and trampling of plants from fire suppression and treatment activities;
- Damage to seedbank as a result of fire severity;
- Soil erosion; and
- An increase of invasive plant species that may compete with native plant species as a result of wildfires removing non-fire-adapted native plant species or as a result of fire suppression equipment introducing invasive plant species.

*Criteria Used To Identify Critical Habitat*

Geographic Range Occupied at the Time of Listing

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are designating critical habitat in areas within the geographic area occupied by the species as described in the final rule to list the Gierisch mallow (see *Species Information* section of the final rule to list the species published elsewhere in today's **Federal Register**) and that contain one or more of the identified primary constituent elements. The geographic area occupied by Gierisch mallow is considered its current range, which includes some areas or patches that are devoid of plants. We are not designating any areas outside the geographic area occupied by the species, because we have determined that unoccupied areas are not essential for the conservation of the species.

Our rationale for not including areas outside of the geographic range of Gierisch mallow is twofold. First, the areas designated as occupied contain the physical or biological features essential for the conservation of the species. Second, within the overall geographic area occupied by the species, there are some areas or patches devoid of plants, as one would expect. Therefore, it follows that within the critical habitat units we are designating, there are areas without the plant growing in them. Thus, even though all units are occupied when considering the appropriate scale for critical habitat designation, there is still room for more plants to grow. This should provide room for expansion of the existing populations. Should recovery planning for this species include actions to augment or establish additional populations, the critical habitat units will provide for enough habitat to allow for those activities. Therefore, we conclude that unoccupied areas outside of the geographic range of the Gierisch mallow are not essential for the conservation of the species.

There is no information on the historical range of this species; however, it is possible that the gypsum hills supported populations of the Gierisch mallow before active mining (and removal of the gypsum) began, but there is no information that the species occurred outside of its current range. Currently, there are 18 known populations restricted to less than approximately 186 ha (460 ac) in Arizona and Utah, combined. The main populations in Arizona are located south of the Black Knolls, approximately 19.3 km (12 mi) southwest of St. George, Utah, with the southernmost population of this group being on the edge of Black Rock Gulch near Mokaac Mountain. There is another population approximately 4.8 km (3 mi) north of the Black Knolls, on ASLD lands near the Arizona/Utah State line. The Utah population is located on BLM lands within 3.2 km (2 mi) of the Arizona/Utah State line, near the Arizona population on ASLD land. Gypsum outcrops associated with the Harrisburg Member are scattered throughout BLM lands in northern Arizona and southern Utah. Extensive surveys were conducted in these areas because numerous other rare plant species are associated with these landforms. Gierisch mallow plants were not located in any other areas beyond what is currently known and described above (Atwood 2008, p. 1). In identifying critical habitat units for Gierisch mallow, we proceeded through a multi-step process.

Mapping

We obtained records of Gierisch mallow distribution from BLM's Arizona Strip Field Office, BLM's St. George Field Office, and both published and unpublished documentation from our files. This information included BLM hand-mapped polygons that outlined Gierisch mallow habitats in Arizona and Utah.

For all areas, survey data from 2001 to 2011 were available and evaluated to identify the extent of occupied habitat (provided by BLM). Although occupied sites may gradually change, recent survey results confirm that plant distribution is similar to observed distributions over the last 10 years.

Our approach to delineating critical habitat units was applied in the following manner:

(1) We overlaid Gierisch mallow locations into a GIS database. This provided us with the ability to examine slope, aspect, elevation, vegetation community, and topographic features, such as drainages, in relation to the locations of Gierisch mallow on the landscape. The locations of Gierisch mallow, and their relationship to landscape features, verified our previous knowledge of the species and slightly expanded the previously recorded elevation ranges for Gierisch mallow. We examined Gierisch mallow locations in an attempt to identify any correlation with aspect, slope, and occurrence location for this species; however, we found no such correlation.

To better understand the relationship of the Gierisch mallow locations to specific soils, we also examined soil series layers, aerial photography, and hardcopy geologic maps. For Gierisch mallow, we analyzed soil survey layers. For Gierisch mallow locations in Utah, we found that 26.02 percent of all individuals rangewide (Arizona and Utah) are associated with Badland, and 0.03 percent of all individuals are associated with Fluvaquents and Torrifluvents soil complexes. In Arizona, we found that occupied sites are associated with the following soil types (percentages are rangewide):

- Nikey-Ruesh complex (3.14 percent),
- Gypill-Hobog complex (65.94 percent),
- Hobog-Tidwell complex (3.53 percent),
- Hobog-Grapevine complex (0.85 percent),
- Grapevine-Shelly complex (0.24 percent), and
- Hindu-Rock outcrop-Gypill complex (0.25 percent) (Service unpublished data).

This provided us with several polygons of occupied habitat spread across the above soil series.

(2) To further refine our critical habitat, we then included 1,200 m (3,937 ft) of pollinator habitat around the polygons of occupied habitat to ensure that all potential pollinators would have a sufficient habitat to establish nesting sites and to provide pollinating services for Gierisch mallow, as described in *Primary Constituent Elements for the Gierisch Mallow* above. Additionally, the 1,200 m (3,937 ft) of pollinator habitat included three other gypsiferous soil types that also contain the necessary habitat for the Gierisch mallow. These soil types are the

- Riverwash,
- Cave-Harrisburg-Grapevine complex, and
- Grapevine-Hobcan complex.

(3) We then drew critical habitat boundaries that captured the locations, soils, and pollinator habitat elucidated under (1) and (2) above. Critical habitat designations were then mapped using Albers Equal Area (Albers) North American Datum 83 (NAD 83) coordinates.

In summary, critical habitat includes all gypsum soils described above as well as the appropriate Mojave desert scrub plant community and associated native species associated and biological soil crusts within the appropriate gypsum soils. Critical habitat also includes all pollinators and their habitat within 1,200 m (3,937 ft) of gypsum soils occupied by Gierisch mallow. When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for Gierisch mallow. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not being designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0018, on our Internet site (*http://www.fws.gov/southwest/es/arizona/*), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

We are designating as critical habitat lands that we have determined to be areas occupied at the time of listing and that contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species. No lands outside of the geographic area occupied at the time of listing are designated as critical habitat. The area included in both units is large enough and contains sufficient habitat to ensure the conservation of Gierisch mallow.

Two units are designated based on sufficient elements of physical or biological features being present to support Gierisch mallow life processes. Both units contain all physical and biological features and support multiple life processes.

**Final Critical Habitat Designation**

We are designating two units as critical habitat for Gierisch mallow. Both units are occupied and contain features that are essential to the conservation of Gierisch mallow. We mapped the units with a degree of precision commensurate with the available information and the size of the unit. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. The two areas we are designating as critical habitat are the Starvation Point Unit and the Black Knolls Unit. The approximate area of each critical habitat unit is shown in Table 3.

TABLE 3—DESIGNATED CRITICAL HABITAT UNITS FOR GIERISCH MALLOW

[Area estimates reflect all land within critical habitat unit boundaries]

| Critical habitat unit | BLM AZ Federal | BLM UT Federal | AZ State lands | UT State lands | Totals |
|---|---|---|---|---|---|
| Unit 1. Starvation Point | 220 ha (544 ac) | 802 ha (1,982 ac) | 249 ha (615 ac) | 68 ha (167 ac) | 1,339 ha (3,309 ac) |
| Unit 2. Black Knolls | 3,586 ha (8,862 ac). | 0 | 263 ha (651 ac) | 0 | 3,850 ha (9,513 ac) |
| Totals | 3,806 ha (9,406 ac). | 802 ha (1,982 ac) | 512 ac (1,266 ac) | 68 ha (167 ac) | 5,189 ha (12,822 ac ) |

**Note:** Area sizes may not sum due to rounding.

Below, we present brief descriptions of all units and reasons why they meet the definition of critical habitat for Gierisch mallow.

*Unit 1: Starvation Point*

This unit consists of 1,339 ha (3,308.7492 ac) in Arizona and Utah, and occurs on land managed by Arizona BLM (220.31 ha; 544.40 ac) and Utah BLM (802.11 ha; 1,982.07 ac), SITLA in Utah (67.73 ha; 167.38 ac), and ASLD in Arizona (248.83 ha; 614.87 ac). This unit was occupied at the time of listing and contains the features essential to the conservation of the species. Unit 1 contains two Gierisch mallow populations, including the second largest population. Unit 1 is located west of I–15 as this highway crosses the State line of Arizona and Utah, and is bounded by the Virgin River to the west and I–15 to the south and east.

The features essential to the conservation of the species may require special management considerations or protection to control invasive plant species, to control habitat degradation due to the recreation and mining activities that disrupt the soil composition, and to maintain the identified associated vegetation and pollinators essential to the conservation of the species. The portion of habitat that occurs on ASLD occurs within the footprint of the Georgia-Pacific Mine, which could resume gypsum mining operations in the near future. Grazing, which can modify the primary

constituent elements and may require special management, typically occurs outside of the growing season for Gierisch mallow in the one pasture on Utah BLM and SITLA lands within this unit; however, recent wildfires in adjacent pastures in this allotment have resulted in livestock grazing occurring into the spring growing season for Gierisch mallow. These recently burned pastures have since been rehabilitated, and livestock grazing is anticipated to return to its normal grazing rotation of November 1 to February 28 in the future (Douglas 2012, p. 1).

*Unit 2: Black Knolls*

This unit consists of approximately 3,850 ha (9,513 ac) in Arizona, and occurs on land managed by both Arizona BLM (3,586.28 ha; 8,861.90 ac) and ASLD (263.62 ha; 651.41 acres). This unit is occupied at the time of listing and contains the features essential to the conservation of the species. Unit 2 contains the remaining 16 Gierisch mallow populations, including the largest population. Unit 2 is located south of I–15 as this highway crosses the State line of Arizona and Utah, and is bounded by Black Rock Gulch to the west and Mokaac Mountain to the south and east.

The features essential to the conservation of the species may require special management considerations or protection to control invasive plant species, to control habitat degradation due to mining activities that disrupt the soil composition, and to maintain the identified associated vegetation and pollinators essential to the conservation of the species. The largest population of Gierisch mallow occurs in the area of the proposed expansion of the Black Rock Gypsum Mine. As described in the final listing rule published elsewhere in today's **Federal Register**, grazing on BLM lands in Arizona typically occurs during the growing season for Gierisch mallow on all three BLM allotments within this critical habitat designation and is expected to modify the primary constituent elements, although some of the pastures are in a rest/rotation system in which a pasture may see an entire year of rest before being grazed again.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

*Application of the ''Adverse Modification'' Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Gierisch mallow. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Gierisch mallow. These activities include, but are not limited to, actions that would significantly alter soil composition that Gierisch mallow requires, including, but not limited to, mining operations, livestock grazing, and special use permits for recreation activities.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

**Exclusions**

*Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (IEc 2013, all). The draft analysis, dated February 22, 2013, was made available for public review from March 28, 2013, through April 29, 2013 (78 FR 18943). Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed, taking into consideration the public comments and any new information.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for Gierisch mallow; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

While we think that the incremental effects approach is appropriate and meets the intent of the Act, we have taken a conservative approach in this instance to ensure that we are fully evaluating the probable effects of this designation. Given that we do not have a new definition of ''destruction or adverse modification,'' there may be certain circumstances where we may want to evaluate impacts beyond those that are solely incremental. Such is the case with Gierisch mallow, where we have extensive case law and determinations of effects that suggest we gather information concerning not only incremental effects, but also coextensive effects.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2012 (year of the species' proposed listing) (77 FR 49894), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies economic impacts of Gierisch mallow conservation efforts associated with the following categories of activity: (1) Gypsum mining; (2) livestock grazing; (3) BLM Land Use Plan amendment; and (4) transportation projects.

Economic impacts associated with the designation of critical habitat are primarily administrative costs associated with consultations under section 7 of the Act. These economic impacts are expected to include both formal and informal consultations under section 7 of the Act as well as technical assistance for those projects that do not

have a Federal nexus but are anticipated to impact Gierisch mallow critical habitat. Incremental impacts associated with consultations for the effects of the above described activities are expected to amount to $51,000 above the baseline cost over the next 20 years. Of that $51,000, approximately $4,700 will be associated with gypsum mining, $27,000 will be attributed to livestock grazing; $12,000 will be associated with BLM land management activities, and $7,000 will be associated with transportation projects along Interstate 15.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Our economic analysis also did not indicate that the benefits of exclusion of critical habitat outweigh the benefits of inclusion. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the Gierisch mallow based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Arizona Ecological Services Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0018 or at *http://www.fws.gov/southwest/es/arizona/.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider the impact on national security of specifying any particular area as critical habitat. In preparing this rule, we have determined that the lands within the designation of critical habitat for the Gierisch mallow are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for Gierisch mallow, and this final designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this final designation based on other relevant impacts.

**Required Determinations**

*Regulatory Planning and Review—Executive Orders 12866 and 13563*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Gierisch mallow will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Gierisch mallow and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking

as described in Chapters 4 through 5 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Gypsum mining; (2) livestock grazing; (3) BLM Land Use Plan amendment; and (4) transportation projects. One of the mining companies (Western Mining) is larger than the threshold for small businesses and is operating on BLM-managed lands. Because Western Mining is operating on BLM-managed lands, there is a Federal nexus, which requires BLM to consult with us for impacts to critical habitat associated with these mining operations. The other mining company (Georgia-Pacific) is also larger than the threshold for small businesses, but it is operating on ASLD-managed lands and, therefore, does not have a Federal nexus. Because there is no Federal nexus associated with ASLD-managed lands, Georgia-Pacific is not required to consult with our office for impacts to critical habitat associated with their mining operations. Livestock grazing operations occurring on BLM-managed lands will also require consultation with our office by the BLM due to the Federal nexus of BLM permitting these activities on their lands. Administrative costs of consultations on road and bridge construction and maintenance are expected to be borne by us, the Federal Highway Administration, and the Arizona Department of Transportation. Therefore, no incremental impacts to small entities will be associated with these consultations. Many of BLM's remaining land management activities, as well as those described above, associated with their Land Use Plan will require consultation with our office and will not involve third parties. Because these consultations do not involve third parties, no impacts to small entities are expected related to these consultations and conservation efforts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders (EOs) 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EOs' regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies, which are not by definition small business entities. As such, we certify that this designation of critical habitat will not have a significant economic impact on a substantial number of small business entities. Therefore, a final regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our final economic analysis for this rule we considered and evaluated the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Gierisch mallow. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section).

In summary, we considered whether this designation will result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we conclude that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for Gierisch mallow will not have a significant economic impact on a substantial number of small entities, and a final regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis determined that Gierisch mallow critical habitat will have no effect on any aspect of energy supply or distribution. Therefore, the economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Gierisch mallow conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty

upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the lands being designated as critical habitat are owned by the State of Arizona, State of Utah, and the BLM. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Gierisch mallow in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. We believe that the takings implications associated with this critical habitat designation will be insignificant, in part, because both units designated are currently considered occupied by the Gierisch mallow and the ability of the species to persist is very closely tied to its habitat. As a result of the biology and life-history characteristics of this species, we found only minor incremental differences between the outcomes of section 7 consultation with and without designation of critical habitat.

Our economic analysis found that the impacts of any potential project modifications, and, therefore, impacts to private land rights, resulting from the designation of critical habitat will be very small. This is because the baseline situation without designating critical habitat already provides protections to the species and its habitats through being listed as endangered. With or without critical habitat, Federal actions that may affect the Gierisch mallow will be required to undergo section 7 consultation. Because the species is so closely associated with its habitat, we cannot foresee a different outcome of the section 7 consultation under either the jeopardy or adverse modification standards. For private actions not involving a Federal nexus, no change in potential impacts to private land rights will result from the designation of critical habitat because critical habitat protections only apply to Federal actions.

Overall, our economic analysis and environmental assessment found only very minor incremental costs associated with the critical habitat designation, and we do not, therefore, anticipate that the critical habitat designation for the Gierisch mallow will result in significant incremental economic impacts above and beyond the current regulatory burden. Additionally, our economic analysis considered whether designating critical habitat will result in a significant economic effect on a substantial number of small entities. The economic analysis found that designation will not affect a substantial number of small entities. Based on information contained in the final economic analysis and final environmental assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, we anticipate that this critical habitat designation will result in insignificant takings implications on these lands. The takings implications assessment concludes that this designation of critical habitat for Gierisch mallow does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Arizona and Utah. We did not receive any comments from State resource agencies in Arizona and Utah. The designation of critical habitat in areas currently occupied by the Gierisch mallow imposes no additional restrictions to those put in place by the listing of this species and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required.

While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Gierisch mallow. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of Gierisch mallow, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

We performed the NEPA analysis, and the draft environmental assessment was made available for public comment on March 28, 2013 (78 FR 18943). The final environmental assessment has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment online at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0018, by mail from the Arizona Ecological Services Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/southwest/es/arizona/*.

The environmental analysis evaluated three alternatives: No critical habitat designation, critical habitat designation with no exclusions, and critical habitat designation with the exclusion of the gypsum mines. The assessment considered potential impacts to the human environment from implementation of each alternative. The assessment differentiates between section7 consultations that will occur due to the listing of the species regardless of critical habitat designation, and consultations that result from the presence of critical habitat. As a result of the environmental assessment, it was determined that there would be no benefit to excluding the lands proposed for gypsum mining from critical habitat. Pursuant to the Council on Environmental Quality regulations for implementing NEPA (40 CFR 1500–1518), the environmental analysis determined that, in the context of short- and long-term impacts, the effects of the critical habitat designation at this scale would be small. Additionally, the environmental analysis determined that the intensity of impacts of designation of critical habitat for Gierisch mallow would be low. Furthermore, the environmental assessment concluded that the designation of critical habitat for the Gierisch mallow does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(C) of NEPA.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that are occupied by the Gierisch mallow that contain the physical or biological features essential for conservation of the species, and no tribal lands unoccupied by the Gierisch mallow that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Gierisch mallow on tribal lands.

## References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0018 and upon request from the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this document are the staff of the Arizona Ecological Services Office.

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, we are amending part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.96(a) by adding an entry for ''*Sphaeralcea gierischii* (Gierisch mallow),'' in alphabetical order under the family Malvaceae, to read as follows:

### § 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Malvaceae: *Sphaeralcea gierischii* (Gierisch mallow)

(1) Critical habitat units are depicted for Washington County, Utah, and Mohave County, Arizona, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Gierisch mallow consist of the following components:

(i) Appropriate geological layers or gypsiferous soils, in the Harrisburg Member of the Kaibab Formation, that support individual Gierisch mallow plants or their habitat, within the elevation range of 775 to 1,148 meters (2,477 to 3,766 feet). Appropriate soils are defined as:

(A) Badland,

(B) Fluvaquents and Torrifluvents,

(C) Riverwash,

(D) Cave-Harrisburg-Grapevine complex,

(E) Grapevine-Hobcan complex,

(F) Nikey-Ruesh complex,

(G) Gypill-Hobog complex,

(H) Hobog-Tidwell complex,

(I) Hobog-Grapevine complex,

(J) Grapevine-Shelly complex, and

(K) Hindu-Rock outcrop-Gypill complex.

(ii) Appropriate Mojave desert scrub plant community and associated native species for the soil types at the sites listed in paragraph (2)(i) of this entry.

(iii) Biological soil crusts within the soil types listed in paragraph (2)(i) of this entry.

(iv) The presence of insect visitors or pollinators, such as the globemallow bee and other solitary bees. To ensure the proper suite of pollinators are present, this includes habitat that provides nesting substrate for pollinators in the areas described in paragraph (2)(ii) of this entry.

(v) Areas free of disturbance and areas with low densities or absence of nonnative, invasive plants, such as red brome and cheatgrass.

(3) Critical habitat includes all gypsum soils described in paragraph (2) of this entry, as well as the appropriate Mojave desert scrub plant community and associated native species and biological soil crusts within the appropriate gypsum soils. Critical habitat also includes all pollinators and their habitat within 1,200 meters (3,937 feet) of gypsum soils occupied by Gierisch mallow. Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on September 12, 2013.

(4) *Critical habitat map units.* Data layers defining map units were created using Albers Equal Area (Albers) North American Datum 83 (NAD 83) coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site (*http://www.fws.gov/southwest/es/Arizona/*), at the Federal eRulemaking Portal (*http://www.regulations.gov,* at Docket No. FWS–R2–ES–2013–0018, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

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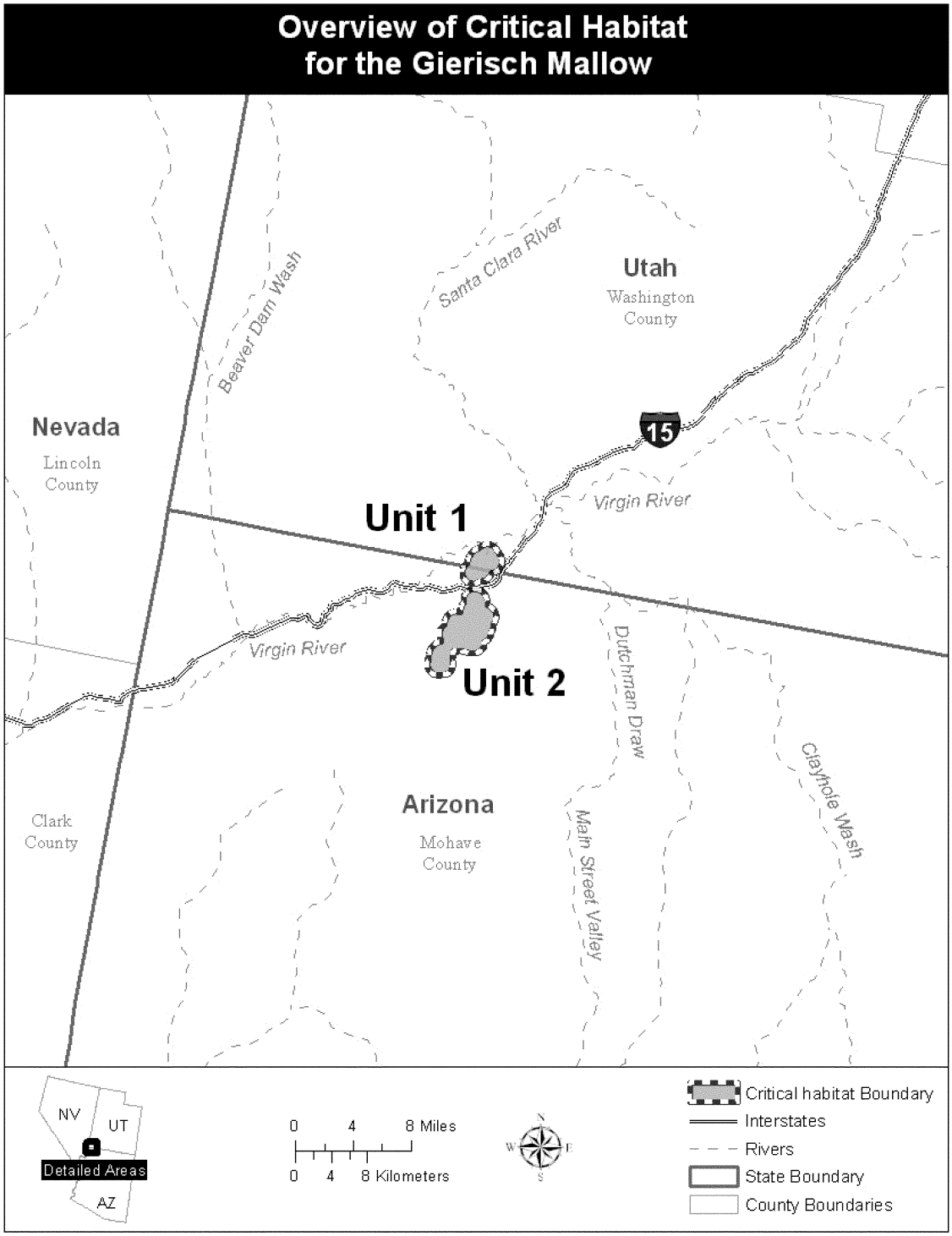
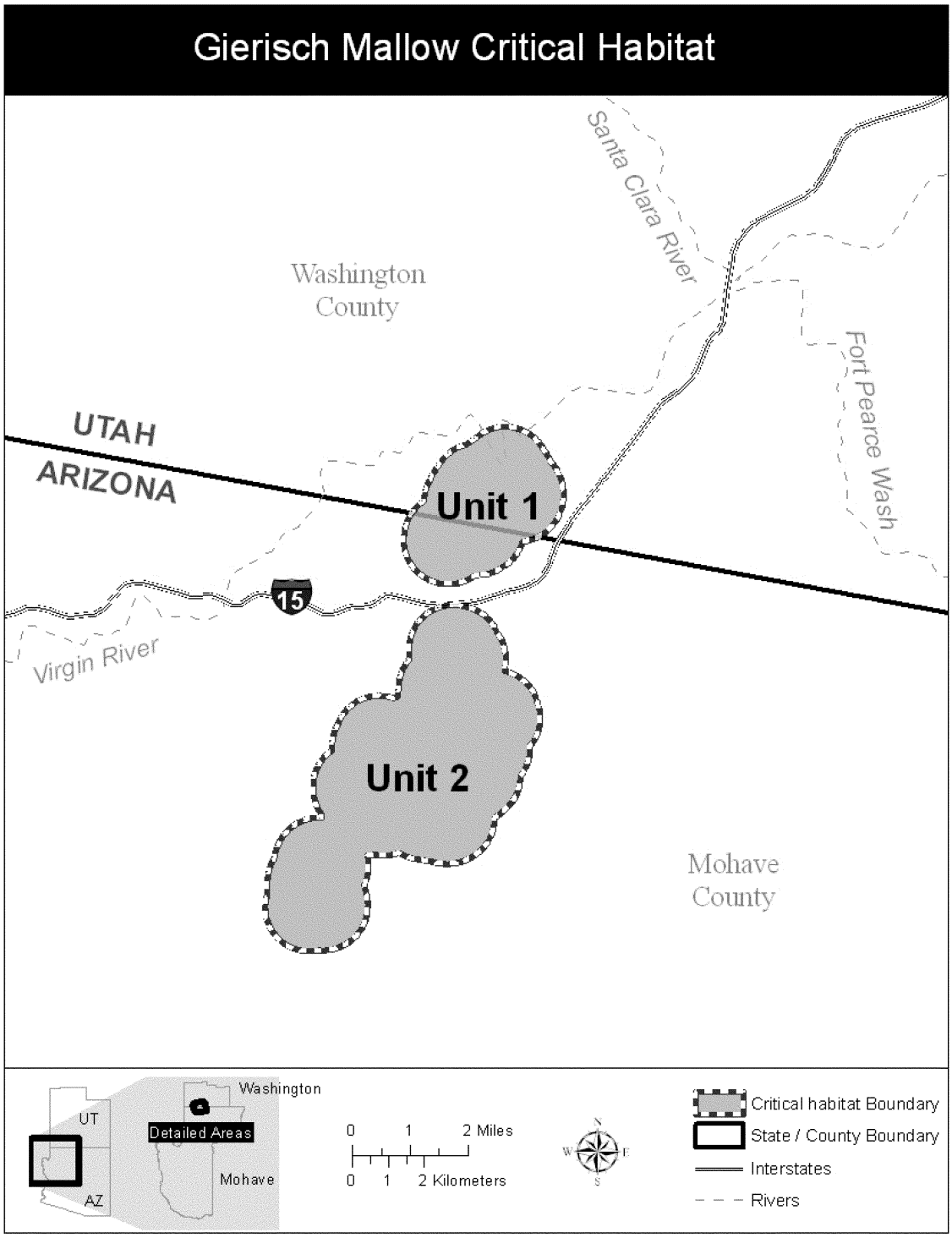
(5) Index map follows:



(6) Unit 1: Starvation Point Unit, Mohave County, Arizona, and Washington County, Utah. Map of Units 1 and 2 follows:



(7) Unit 2: Black Knolls Unit, Mohave County, Arizona. Map of Unit 2 is provided at paragraph (6) of this entry.

* * * * *

Dated: August 1, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013–19385 Filed 8–12–13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 120924488–3671–02]**

**RIN 0648–BC60**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 15

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS implements management measures described in a regulatory amendment (Regulatory Amendment 15) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). This final rule increases the commercial and recreational ACLs for yellowtail snapper, decreases the commercial ACL for gag, and revises the accountability measure (AM) for gag by removing the requirement that all other South Atlantic shallow-water grouper (SASWG) are prohibited from harvest when the gag commercial ACL is met or projected to be met. In addition, Regulatory Amendment 15 revises the optimum yield (OY) for yellowtail snapper and increases the recreational annual catch target (ACT) for yellowtail snapper harvested in or from the South Atlantic exclusive economic zone (EEZ). This final rule also includes several administrative changes to regulatory text, which are unrelated to the measures contained in Regulatory Amendment 15. The purpose of Regulatory Amendment 15 and this final rule is to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the snapper-grouper resource, while maintaining fishing mortality at sustainable levels according to the best scientific information available.

**DATES:** This rule is effective September 12, 2013.

**ADDRESSES:** Electronic copies of Regulatory Amendment 15, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/SGRegAmend15.pdf*.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic, which includes yellowtail snapper and SASWG species (*i.e.,* gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney), is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On May 24, 2013, NMFS published a proposed rule for Regulatory Amendment 15 and requested public comments (78 FR 31511). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

### Management Measures Contained in This Final Rule

This rule implements management measures affecting yellowtail snapper, gag, and other SASWG harvested in or from the South Atlantic EEZ.

*Yellowtail Snapper*

This rule increases the commercial ACL, recreational ACL, and recreational ACT for yellowtail snapper. The commercial ACL increases from 1,142,589 lb (518,270 kg), round weight, to 1,596,510 lb (725,686 kg), round weight. The recreational ACL increases from 1,031,286 lb (467,783 kg), round weight, to 1,440,990 lb (653,622 kg), round weight. The recreational ACT increases from 897,160 lb (406,945 kg), round weight, to 1,253,661 lb (568,651 kg), round weight.

*Gag and Other South Atlantic Shallow-Water Grouper*

This rule modifies the commercial AM for gag so that only the commercial sector for gag closes when the gag commercial ACL is met or projected to be met. The ACLs and AMs for all other SASWG species would remain unchanged. This rule also reduces the gag commercial ACL from 353,940 lb (160,544 kg), gutted weight, to 326,722 lb (148,199 kg), gutted weight, to account for projected gag discard mortality from commercial trips that target co-occurring species (*i.e.,* red grouper and scamp) during a gag closure.

*Other Changes to Codified Text*

This rule makes several changes to the regulatory text in 50 CFR part 622 that are administrative in nature and unrelated to Regulatory Amendment 15. In two paragraphs within § 622.183, ''fishery'' is changed to ''sector'' to clarify that it is a commercial sector or recreational sector within a specific fishery and to be consistent with other regulations in part 622.

Black grouper and red grouper are removed from the heading of § 622.190(c)(1), restrictions applicable after a commercial quota closure, because black grouper and red grouper no longer have quotas, only ACLs and AMs.

In several paragraphs within § 622.193, ''fishery'' is changed to ''sector'', for clarification and consistency purposes. Also in § 622.193, the specific years for evaluating the recreational landings relative to the ACL are removed from the regulatory text because these years will keep changing. Instead, more general language is included in the regulatory text, specifically referring to a multi-year average of landings, as described in the FMP. In addition, closure provisions are included in the regulatory text for snowy grouper when the recreational post-season AM is implemented, because these closure provisions were inadvertently not included in the final rule to implement the Comprehensive ACL Amendment.

In Table 4 of Appendix A to Part 622, ''Grass porgy, *Calamus arctifrons*'' is removed from the table because this species was removed from the South Atlantic snapper-grouper fishery management unit in the Comprehensive ACL Amendment; however, it was inadvertently not removed from the regulations during implementation of that amendment.

### Comments and Responses

A total of 14 comments were received on the proposed rule for Regulatory Amendment 15 from individuals, fishermen, and two fishing associations. Nine commenters supported the actions in the amendment and the proposed rule. A Federal agency stated that the

agency had no comments. Specific comments related to the actions contained in Regulatory Amendment 15 and the proposed rule, and NMFS' respective responses are summarized below.

*Comment 1:* One commenter stated that to protect shallow-water grouper species, fishery managers should remove the January through April 4-month seasonal closure and instead implement closures in March, April, July, and August until the quota is reached. The commenter indicated that shallow-water groupers are susceptible to harvest by spearfishing as cold upwelling water in July and August incapacitates the fish.

*Response:* The January through April prohibition on the harvest and possession of shallow-water groupers was implemented in 2009 to protect gag and other spawning groupers. Many groupers are known to begin spawning in December, with the spawning season extending through at least April. Gag and other shallow-water grouper species are slow growing, long-lived species that change sex from female to male later in life, and form spawning aggregations at locations known to fishermen. Removing the prohibition in January and February was not considered in Regulatory Amendment 15 because it would remove protections at a time when groupers are particularly vulnerable to fishing gear. NMFS recognizes that sporadic cold, upwelling water events may increase the vulnerability of gag and other shallow-water groupers to spearfishing pressure. However, the protection of spawning fish during January through April is paramount to preventing harvest during upwelling events as fishing on spawning aggregations can affect the population age structure and sex ratio by removing the larger, older males and by disrupting spawning aggregations that form at specific times and locations.

*Comment 2:* A commercial fisherman favored a 50-lb (23-kg) bycatch allowance for gag after the commercial quota is reached instead of reducing the gag quota by 27,218 lb (12,346 kg), as proposed in Regulatory Amendment 15. The commenter stated that the bycatch allowance would be low enough to keep fishermen from targeting gag, allow fishermen to keep those that are caught while targeting other species, and would increase profits to commercial fisherman.

*Response:* The Council did not consider a specific bycatch allowance for gag in Regulatory Amendment 15 because the Council and NMFS reduced the commercial ACL for gag to account for bycatch after the quota is met. Currently, gag harvest is prohibited once the ACL is projected to be met, but gag continue to be caught after the closure and they are released. The most recent stock assessment estimated that 60 percent of released gag in the South Atlantic survive. A 50-lb (23-kg) bycatch allowance would result in the complete mortality of all gag caught after the ACL is met, assuming that all encountered fish up to the trip limit are retained, and would then require a reduction in the current 1,000-lb (454-kg) commercial trip limit to avoid a gag closure earlier in the season.

*Comment 3:* One commenter stated that yellowtail snapper should be prohibited for several years as he thought the stock was overfished.

*Response:* The stock assessment completed for yellowtail snapper in May 2012 determined that the stock is not overfished nor undergoing overfishing. The assessment results suggest yellowtail snapper catch levels could be increased to achieve OY for the fishery without jeopardizing the health of the population. Both the Gulf of Mexico and South Atlantic Councils' Scientific and Statistical Committees' reviewed the assessment in October 2012 and determined the assessment to be based upon the best scientific information available, and the Councils reviewed the assessment and accepted the results. In addition, the NMFS' Southeast Fisheries Science Center reviewed the proposed actions in Regulatory Amendment 15 and certified the actions to be based upon the best scientific information available.

**Classification**

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule and Regulatory Amendment 15 are necessary for the conservation and management of the snapper-grouper fishery and are consistent with the FMP, the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the SBA during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $4.0 to $19.0 million, Shellfish Fishing from $4.0 to $5.0 million, and Other Marine Fishing from $4.0 to $7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013, rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. No changes to the final rule were made in response to public comments. As a result, a regulatory flexibility analysis was not required and none was prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Gag, Shallow-Water Grouper, South Atlantic, Yellowtail snapper.

Dated: August 7, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.183, the heading of paragraph (b)(1) is revised to read as follows:

**§ 622.183 Area and seasonal closures.**

* * * * *

(b) * * *

(1) *Seasonal closure of the commercial and recreational sectors for gag and associated grouper species.*

* * *

* * * * *

■ 3. In § 622.190, paragraph (a)(7) and the heading of paragraph (c)(1) are revised to read as follows:

**§ 622.190 Quotas.**

* * * * *

(a) * * *

(7) *Gag*—326,722 lb (148,199 kg).

* * * * *

(c) * * *

(1) *South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, red porgy, and wreckfish.* * * *

* * * * *

■ 4. In § 622.193, paragraphs (b), (c), paragraph (n)(1)(i) and the first sentence in paragraph (n)(2) are revised to read as follows:

**§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

* * * * *

(b) *Snowy grouper*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(1), the AA will file a notification with the Office of the Federal Register to close the commercial sector for snowy grouper for the remainder of the fishing year.

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, exceed the recreational ACL of 523 fish, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. When NMFS reduces the length of the following recreational fishing season, the following closure provisions apply: the bag and possession limit for snowy grouper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(c) *Gag*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.190(a)(7), the AA will file a notification with the Office of the Federal Register to close the commercial sector for gag for the remainder of the fishing year.

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 340,060 lb (154,249 kg), gutted weight, and gag are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to close the gag recreational sector for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit for gag in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) Without regard to overfished status, if gag recreational landings exceed the ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the ACL for that fishing year by the amount of the overage.

(iii) Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

(n) * * *

(1) * * *

(i) If commercial landings for yellowtail snapper, as estimated by the SRD, reach or are projected to reach the commercial ACL of 1,596,510 lb (724,165 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of yellowtail snapper is prohibited and harvest or possession of this species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

* * * * *

(2) * * * If recreational landings for yellowtail snapper, as estimated by the SRD, exceed the recreational ACL of 1,440,990 lb (653,622 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. * * *

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■ 5. In Appendix A to part 622, Table 4 is revised to read as follows:

**Appendix A to Part 622—Species Tables**

* * * * *

Table 4 of Appendix A to Part 622—South Atlantic Snapper-Grouper

Balistidae—Triggerfishes
- Gray triggerfish, *Balistes capriscus*

Carangidae—Jacks
- Blue runner, *Caranx bartholomaei*
- Bar jack, *Caranx ruber*
- Greater amberjack, *Seriola dumerili*
- Lesser amberjack, *Seriola fasciata*
- Almaco jack, *Seriola rivoliana*
- Banded rudderfish, *Seriola zonata*

Ephippidae—Spadefishes
- Spadefish, *Chaetodipterus faber*

Haemulidae—Grunts
- Margate, *Haemulon album*
- Tomtate, *Haemulon aurolineatum*
- Sailor's choice, *Haemulon parrai*
- White grunt, *Haemulon plumieri*

Labridae—Wrasses
- Hogfish, *Lachnolaimus maximus*

Lutjanidae—Snappers
- Black snapper, *Apsilus dentatus*
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Blackfin snapper, *Lutjanus buccanella*
- Red snapper, *Lutjanus campechanus*
- Cubera snapper, *Lutjanus cyanopterus*
- Gray snapper, *Lutjanus griseus*
- Mahogany snapper, *Lutjanus mahogoni*
- Dog snapper, *Lutjanus jocu*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes
- Blueline tilefish, *Caulolatilus microps*
- Golden tilefish, *Lopholatilus chamaeleonticeps*
- Sand tilefish, *Malacanthus plumieri*

Percichthyidae—Temperate basses
- Wreckfish, *Polyprion americanus*

Serranidae—Groupers
- Rock hind, *Epinephelus adscensionis*
- Graysby, *Epinephelus cruentatus*
- Speckled hind, *Epinephelus drummondhayi*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Coney, *Epinephelus fulvus*
- Red hind, *Epinephelus guttatus*
- Goliath grouper, *Epinephelus itajara*
- Red grouper, *Epinephelus morio*
- Misty grouper, *Epinephelus mystacinus*
- Warsaw grouper, *Epinephelus nigritus*
- Snowy grouper, *Epinephelus niveatus*
- Nassau grouper, *Epinephelus striatus*

Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*
Serranidae—Sea Basses
Black sea bass, *Centropristis striata*
Sparidae—Porgies
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus pagrus*
Scup, *Stenotomus chrysops*
The following species are designated as ecosystem component species:
Cottonwick, *Haemulon melanurum*
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Longspine porgy, *Stenotomus caprinus*
Ocean triggerfish, *Canthidermis sufflamen*
Schoolmaster, *Lutjanus apodus*

* * * * *

[FR Doc. 2013–19605 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 120416018–3679–02]**

**RIN 0648–BC05**

## Fisheries of the Northeastern United States; Tilefish Fishery Management Plan; Regulatory Amendment, Corrections, and Clarifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This action makes corrections, clarifications, and other modifications to the regulations that implemented the Tilefish Individual Fishing Quota Program. These changes will not affect the fishing operation of any vessel.

**DATES:** Effective September 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, phone (978) 281–9341, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 24, 2009, NMFS published a final rule (74 FR 42580) to implement provisions of Amendment 1 to the Tilefish Fishery Management Plan (FMP) (Amendment 1). Amendment 1 included a new structure for managing the commercial tilefish fishery using an individual fishing quota (IFQ) system. The new tilefish IFQ program became effective November 1, 2009. After 3 years of operation, it has become apparent that some of the implementing regulations need to be clarified, corrected, or modified to better reflect the intent of Amendment 1.

On March 28, 2013, NMFS published a proposed rule in the **Federal Register** (78 FR 18947) proposing several minor corrections, clarifications, and modifications to the regulations implementing Amendment 1. Comments on the proposed rule were accepted through April 29, 2013. No comments were received on the measures, and the measures, as proposed, are implemented by this final rule.

The purpose of this action is to clarify, correct, and/or modify certain provisions of the tilefish IFQ program's implementing regulations to clarify potentially confusing regulatory language, and to better reflect the intent of Amendment 1 and current practices under the tilefish IFQ program. Specifically, this action (1) Clarifies the two aspects of tilefish IFQ allocation by differentiating between quota share and quota pounds, and removes suggestions that either are ''owned'' or ''permanent;'' (2) specifies in the regulations that tilefish landings may be reported through the Interactive Voice Response system, or through another system approved by the NMFS Northeast Regional Administrator, to allow for the future development of an online reporting option; (3) corrects cross-references within the regulations pertaining to the Research Set-Aside Program; (4) revises language and cross-references in the regulations to clarify that permanent resident aliens are allowed to hold a tilefish IFQ allocation permit, as specified in Amendment 1; (5) modifies the regulations to extend the deadline for quota pound transfers from September 1 to October 10 of each fishing year; and (6) modifies the regulations governing the cost recovery fee collection system to reflect current fee collection practices and the intent of Amendment 1 to ensure clear and efficient collection of the required cost-recovery fees. Additional detail and explanation regarding the reason for these changes are provided in the proposed rule and are not repeated here.

### Changes From the Proposed Rule

The proposed regulatory text regarding IFQ transfer applications inadvertently used the less specific term ''catch share.'' The regulatory language has been corrected to use the more appropriate term ''quota share,'' consistent with the terminology used in rest of that regulatory paragraph. The introductory text on IFQ transfer applications has been adjusted to more clearly explain why applications for permanent transfers are due before September 1, while applications for temporary transfers are due before October 10.

### Comments and Responses

NMFS received no comments on the proposed rule.

### Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the management of the tilefish fishery and that it is consistent with the Tilefish FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $4.0 to $19.0 million, Shellfish Fishing from $4.0 to $5.0 million, and Other Marine Fishing from $4.0 to $7.0 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, a certification was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013, rule, NMFS has reviewed the certification prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 8, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, the definitions of ''Interest in an IFQ allocation'' and ''Lessee'' are revised to read as follows:

**§ 648.2 Definitions.**

* * * * *

*Interest in an IFQ allocation* means: An allocation of quota share or annual IFQ allocation held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

* * * * *

*Lessee* means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) A person or entity eligible to hold tilefish IFQ allocation, who receives temporarily transferred tilefish IFQ allocation, as specified at § 648.294(e)(1).

* * * * *

■ 3. In § 648.7, paragraph (b)(2)(ii) is revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

* * * * *

(b) * * *

(2) * * *

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel fishing under a tilefish IFQ allocation permit issued under this part, as described in § 648.294(a), must submit a tilefish catch report by using the IVR system, or other reporting system approved by the Regional Administrator, within 48 hours after returning to port and offloading. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; trip during which tilefish are caught; pounds landed; VTR pre-printed serial number; and the Federal dealer number for the dealer who purchases the tilefish. This reporting requirement does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

■ 4. In § 648.292, paragraph (e) is revised to read as follows:

**§ 648.292 Tilefish specifications.**

* * * * *

(e) *Research quota.* See § 648.22(g).

■ 5. Section 648.294 is revised to read as follows:

**§ 648.294 Individual fishing quota (IFQ) program.**

(a) *IFQ allocation permits.* (1) After adjustments for incidental catch, research set-asides, and overages, as appropriate, pursuant to § 648.292(c), the Regional Administrator shall divide the remaining TAL among the IFQ quota share holders who held IFQ quota share as of September 1 of a given fishing year. Allocations shall be made by applying the IFQ quota share percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.292(c), subject to any deductions for overages pursuant to paragraph (f) of this section. Amounts of IFQ allocation of 0.5 lb (0.23 kg) or smaller created by this calculation shall be rounded downward to the nearest whole number, and amounts of IFQ allocation greater than 0.5 lb (0.23 kg) shall be rounded upward to the nearest whole number, so that annual IFQ allocations are specified in whole pounds.

(2) Allocations shall be issued in the form of an annual IFQ allocation permit. The IFQ allocation permit shall specify the quota share percentage held by the IFQ allocation permit holder and the total pounds of tilefish that the IFQ allocation permit holder is authorized to harvest.

(3) In order to be eligible to hold tilefish IFQ allocation, an individual must be a U.S. citizen or permanent resident alien. Businesses or other entities that wish to hold allocation must be eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

(b) *Application*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ quota shares and IFQ allocations, as defined in § 648.2, listed by IFQ allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) [Reserved]

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by September 15 to be processed in time for the November 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before October 31 to those who hold IFQ quota share as of September 1 of the current fishing year. From September 1 through October 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) *Duration.* An annual IFQ allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

(4) *IFQ Vessel.* All Federal vessel permit numbers that are listed on the IFQ allocation permit are authorized to possess tilefish pursuant to the IFQ allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ allocation permit holder who

wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ allocation permit must send written notification to NMFS. This notification must include the vessel name and permit number, and the dates on which the IFQ allocation permit holder desires the vessel to be authorized to land tilefish pursuant to the IFQ allocation permit. A copy of the IFQ allocation permit must be carried on board each vessel so authorized to possess IFQ tilefish.

(5) *Alteration.* An annual IFQ allocation permit that is altered, erased, or mutilated is invalid.

(6) *Replacement.* The Regional Administrator may issue a replacement permit upon written application of the annual IFQ allocation permit holder.

(7) *Transfer.* The annual IFQ allocation permit is valid only for the person to whom it is issued. All or part of the IFQ quota share or the annual IFQ allocation specified in the IFQ allocation permit may be transferred in accordance with paragraph (e) of this section.

(8) *Abandonment or voluntary relinquishment.* Any IFQ allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c)–(d) [Reserved]

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the initial holder of an annual IFQ allocation may transfer the entire annual IFQ allocation, or a portion of the annual IFQ allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section. Annual IFQ allocation transfers shall be effective only for the fishing year in which the transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all annual IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred annual IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, and subject to final approval by the Regional Administrator, a holder of IFQ quota share may permanently transfer the entire IFQ quota share allocation, or a portion of the IFQ quota share allocation, to any person or entity eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section.

(3) *IFQ allocation transfer restrictions.* (i) If annual IFQ allocation is temporarily transferred to any eligible person or entity, it may not be transferred again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ allocation or quota share will not be approved by the Regional Administrator if it would result in an entity holding, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) For the purpose of calculating the appropriate IFQ cost recovery fee, if the holder of an IFQ allocation leases additional IFQ allocation, the quantity and value of landings made after the date the lease is approved by the Regional Administrator are attributed to the transferred quota before being attributed to the allocation holder's base IFQ allocation, if any exists. In the event of multiple leases, landings would be attributed to the leased allocations in the order the leases were approved by the Regional Administrator. As described in paragraph (h) of this section, a tilefish IFQ quota share allocation holder shall incur a cost recovery fee, based on the value of landings of tilefish authorized under the allocation holder's annual tilefish IFQ allocation, including allocation that is leased to another IFQ allocation permit holder.

(4) *Application for an IFQ allocation transfer.* Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by September 1 to be processed and effective before annual IFQ allocations are issued for the next fishing year. Applications for temporary IFQ allocation transfers must be received by October 10 to be processed for the current fishing year.

(i) *Application information requirements.* An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent); the signature of both parties involved; the price paid for the transfer; a declaration of the recipient's eligibility to receive IFQ allocation; the amount of allocation or quota share to be transferred; and a declaration, by IFQ allocation permit number, of all the IFQ allocations in which the person or entity receiving the IFQ allocation has an interest. The person or entity receiving the IFQ allocation must indicate the permit numbers of all federally permitted vessels that will possess or land the IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer application.* Unless an application to transfer IFQ quota share and/or annual IFQ allocation is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of IFQ transfer application.* The Regional Administrator may reject an application to transfer IFQ quota share or annual IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ allocation permit; the transferor's or transferee's vessel or tilefish IFQ allocation permit has been sanctioned pursuant to an enforcement proceeding under 15 CFR part 904; the transfer would result in the transferee having a tilefish IFQ allocation or holding IFQ quota share that exceeds 49 percent of the adjusted TAL allocated to IFQ allocation permit holders; the transfer is to a person or entity that is not eligible to hold tilefish IFQ allocation under paragraph (a)(3) of this section; the transferor or transferee is delinquent in payment of an IFQ cost recovery fee as described in paragraph (h)(4) of this section; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is

no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* If an IFQ allocation is exceeded, including by amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, the amount of the overage will be deducted from the IFQ shareholder's allocation in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ allocation permit is issued for the subsequent fishing year, a revised IFQ allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction.* No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.294, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer, or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost recovery.* As required under section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the Regional Administrator shall collect a fee to recover the actual costs directly related to the management, data collection and analysis, and enforcement of the tilefish IFQ program.

(1) *Payment responsibility.* Each tilefish IFQ allocation permit holder with quota share shall incur a cost recovery fee annually, based on the value of landings of tilefish authorized under his/her tilefish IFQ allocation, including allocation that he/she leases to another IFQ allocation permit holder. The tilefish IFQ allocation permit holder is responsible for paying the fee assessed by NMFS.

(2) *IFQ fee determination.* The tilefish IFQ cost recovery billing period runs annually from January 1 through December 31.

(i) *Determination of total recoverable costs.* The Regional Administrator shall determine the actual costs directly associated with the management, data collection and analysis, and enforcement of the tilefish IFQ program incurred by NMFS during the cost recovery billing period.

(ii) *Calculating fee percentage.* The recoverable costs determined by the Regional Administrator will be divided by the total ex-vessel value of all tilefish IFQ landings during the cost recovery billing period to derive a fee percentage. Each IFQ allocation permit holder with quota share will be assessed a fee based on the fee percentage multiplied by the total ex-vessel value of all landings under his/her IFQ allocation permit, including landings of allocation that was leased to another IFQ allocation permit holder.

(A) The ex-vessel value for each pound of tilefish landed by an IFQ allocation permit holder shall be determined from Northeast Federal dealer reports submitted to NMFS, which include the price per pound paid to the vessel at the time of dealer purchase.

(B) The cost recovery fee percentage shall not exceed 3 percent of the total value of tilefish landings, as required under section 304(d)(2)(B) of the Magnuson-Stevens Act.

(3) *Fee payment procedure.* NMFS will create an annual IFQ allocation bill for each cost recovery billing period and provide it to IFQ allocation permit holders with quota share. The bill will include information regarding the amount and value of IFQ allocation landed during the prior cost recovery billing period, and the associated cost recovery fees.

(i) *Payment due date.* An IFQ allocation permit holder who has incurred a cost recovery fee must pay the fee to NMFS within 45 days of the date of the bill.

(ii) *Payment submission method.* Cost recovery payments shall be made electronically via the Federal Web portal, *www.pay.gov,* or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not practicable.

(4) *Payment compliance.* If an IFQ allocation permit holder does not submit full payment by the due date described in paragraph (h)(3)(i) of this section, the Regional Administrator may:

(i) At any time thereafter, notify the IFQ allocation permit holder in writing that his/her IFQ allocation permit is suspended, thereby prohibiting landings of tilefish above the incidental limit, as specified at § 648.295.

(ii) Disapprove any transfer of annual tilefish allocation or quota share to or from the IFQ allocation permit holder as described in paragraph (e)(4)(iii) of this section, until such time as the amount due is paid.

(iii) Deny renewal of the IFQ allocation permit if it had not yet been issued for the current year, or deny renewal of the IFQ allocation permit for the following year.

(iv) If the fee amount is not appealed, the Regional Administrator may issue a Final Administrative Determination (FAD) as described in paragraph (h)(5) of this section, based upon available information.

(5) *Appeal of IFQ fee amount.* If a tilefish IFQ allocation permit holder disagrees with the fee amount determined by NMFS, he/she may appeal the cost recovery bill.

(i) IFQ fee appeals must be submitted to NMFS in writing before the due date described in paragraph (h)(3)(i) of this section.

(ii) The IFQ allocation permit holder shall have the burden of demonstrating that the fee amount calculated by NMFS is incorrect and what the correct amount is.

(iii) If a request to appeal is submitted on time, the Regional Administrator shall notify the IFQ allocation permit holder in writing, acknowledging the appeal and providing 30 days to submit any additional relevant documentation supporting an alternative fee amount.

(iv) While the IFQ fee is under appeal and the tilefish IFQ allocation permit is suspended, as described in paragraph (h)(4) of this section, the IFQ allocation permit holder may request a Letter of Authorization to fish until the appeal is concluded. Any tilefish landed pursuant to the above authorization will count against the IFQ allocation permit, if issued.

(v) *Final Administrative Determination (FAD).* Based on a review of available information, including any documentation submitted by the IFQ allocation permit holder in support of the appropriateness of a different fee amount, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that an alternate fee amount is correct. This determination shall be set forth in a FAD that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce.

(A) The IFQ allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD.

(B) If the IFQ allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall:

(*1*) Refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection; and

(*2*) Cancel any Letter of Authorization to fish that had been issued during the appeal.

(vi) If NMFS does not receive full payment of an IFQ cost recovery fee prior to the end of the cost recovery billing period immediately following the one for which the fee was incurred, the subject IFQ allocation permit and any associated IFQ quota share shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(8) of this section.

(6) *Annual cost recovery report.* NMFS will publish annually a report on the status of the tilefish IFQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, enforcement, and data collection and analysis associated with the tilefish IFQ program during the prior cost recovery billing period, and other relevant information at the discretion of the Regional Administrator.

(i) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the MAFMC within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled MAFMC review of the FMP (*i.e.,* future amendments or frameworks), but no less frequently than every 7 years.

[FR Doc. 2013–19561 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 120814338–2711–02]**

**RIN 0648–BD47**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) August 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Hanshew (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736, *gretchen.hanshew@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

### Background

The PCGFMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 14, 2012, NMFS published a proposed rule to implement the 2013–2014 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (77 FR 67974). The final rule to implement the 2013–2014 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on January 3, 2013 (78 FR 580).

The Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended the changes to current groundfish management measures at its June 18–June 25, 2013 meeting. Management measures are designed to meet two primary goals: To achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species; and to foster the rebuilding of overfished stocks by keeping harvest within their rebuilding ACLs. The Council recommended adjusting groundfish management measures to respond to updated fishery information and additional inseason management needs. Those changes to management measures are implemented in this action. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species, except for bocaccio, than originally projected through the end of the year.

### Fishery Management Measures for the Limited Entry Fixed Gear (LEFG) and Open Access (OA) Sablefish Daily Trip Limit (DTL) Fisheries North of 36° N. Lat.

To increase harvest opportunities for the LEFG and OA fixed gear sablefish DTL fisheries north of 36° N. lat., the Council considered increases to trip limits. The Council's Groundfish Management Team (GMT) made model-based landings projections for the LEFG and OA fixed gear sablefish DTL fisheries north of 36° N. lat. for the remainder of the year. These projections were based on the most recent information available. The model predicted harvest of 84 percent (165 mt) of the LEFG harvest guideline (197 mt) and 82 percent (239 mt) of the OA harvest guideline (291 mt) under current trip limits. With the increase in trip limits, predicted harvest is 94 percent (185 mt) of the LEFG harvest guideline (197 mt) and 94 percent (274 mt) of the OA harvest guideline (291 mt). Projections for the fixed gear sablefish fisheries south of 36° N. lat. were tracking within their targets and no inseason actions were considered.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the LEFG and the OA sablefish DTL fisheries north of 36° N. lat. The trip limits for sablefish in the LEFG fishery north of 36° N. lat. increase from ''950 lb (431 kg) per week, not to exceed 2,850 lb (1,293 kg) per two months'' to ''1,110 lb (499 kg) per week, not to exceed 3,300 lb (1,497 kg) per two months'' beginning in period 4 through the end of the year.

The trip limits for sablefish in the OA sablefish DTL fishery north of 36° N. lat. are increased from ''300 lb (136 kg) per day, or one landing per week of up to 700 lb (318 kg), not to exceed 1,400 lb (635 kg) per two months'' to ''300 lb (136 kg) per day, or one landing per week of up to 800 lb (363 kg), not to exceed 1,600 lb (726 kg) per two months'' beginning in period 4 through the end of the year.

**Limited Entry Fixed Gear (LEFG) Fishery Trip Limits for Shortspine Thornyhead North of 34°27′ N. Lat.**

To increase harvest opportunities for the LEFG fishery north of 34°27′ N. lat., the Council considered an increase to the two-month cumulative limits for shortspine thornyhead in the LEFG fishery. The Council's GMT made model-based landings projections of the LEFG fishery north of 34°27′ N. lat. for the remainder of the year. These projections were based on the most recent information available under the current trip limit scenario. The model results predicted a harvest projection of 81 percent (60 mt) of the LEFG harvest guideline (74 mt) under the status quo trip limits. Landings projections with the proposed increased trip limits predict a harvest of 94 percent (70 mt) of the LEFG harvest guideline (74 mt).

Therefore, the Council recommended and NMFS is implementing trip limit increases for shortspine thornyhead in the LEFG fishery north of 34°27′ N. lat. The trip limits increased from ''2,000 lb (907 kg) per two months'' to ''2,500 lb (1134 kg) per two months'' beginning in period 4 through the end of the year.

**Limited Entry Fixed Gear (LEFG) Fishery Trip Limits for Shelf Rockfish South of 34°27′ N. Lat.**

The Council received an industry request to increase the LEFG shelf rockfish trip limits south of 34°27′ N. lat. Trip limits for shelf rockfish include species in the minor shelf rockfish complex, yellowtail rockfish, shortbelly rockfish and widow rockfish. The minor shelf rockfish complex, including yellowtail rockfish, south of 40°10′ N. lat., and shortbelly rockfish have not been fully harvested in recent years. Widow rockfish has also not been fully harvested in the non-trawl fisheries in recent years. West Coast Groundfish Observer Program data indicate very few encounters with overfished species and California state fish ticket data indicate that very few vessels actually attained full trip limits for shelf rockfish between 2008 and 2012.

Based on these data, the GMT estimated that landings would increase by approximately 0.5 metric tons, to a total of 2.1 metric tons. This modest increase in trip limits for shelf rockfish is not expected to result in an overharvest of any species as a result of this request.

Therefore, the Council recommended and NMFS is implementing increased trip limits for shelf rockfish in the LEFG fishery south of 34°27′ N. lat., from ''3,000 lb (1361 kg) per two months'' to ''4,000 lb (1814 kg) per two months'' beginning in period 4 through the end of the year.

**Limited Entry Fixed Gear (LEFG) and Open Access (OA) Fishery Trip Limits for Bocaccio South of 34°27′ N. Lat.**

There are increased encounters with bocaccio south of 34°27′ N. lat. resulting from a very strong year class entering the fishery. In order to reduce unnecessary discarding as a result of increased encounters with the new year-class entrants, industry submitted a request to the Council to raise the two-month cumulative limits for bocaccio south of 34°27′ N. lat. The estimated take of bocaccio would increase by approximately 1.1 metric tons, which is well within the non-trawl bocaccio allocation south of 40°10′ N. lat.

Therefore, the Council recommended and NMFS is implementing trip limit changes for bocaccio in the LEFG and the OA fixed gear fishery south of 34°27′ N. lat. The trip limits for bocaccio in the LEFG fishery south of 34°27′ N. lat. are increased from ''300 lb (136 kg) per two months'' to ''500 lb (227 kg) per two months'' beginning in period 4 through the end of the year. The trip limits for bocaccio in the OA fishery south of 34°27′ N. lat. are increased from ''100 lb (45 kg) per two months'' to ''200 lb (91 kg) per two months'' beginning in period 4 through the end of the year.

**Classification**

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective August 13, 2013.

At the June Council meeting, the Council recommended that these changes be implemented as quickly as possible during the July-August two-month cumulative limit period. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the PCGFMP and applicable law. The adjustments to management measures in this document affect commercial fisheries in Washington, Oregon and California. These adjustments to management measures must be implemented in a timely manner, as quickly as possible during the July-August two-month cumulative limit period: To allow LEFG and OA fixed gear fishermen an opportunity to harvest their limits for sablefish without exceeding the ACL north of 36° N. lat.; to allow LEFG fishermen to harvest shortspine thornyead without exceeding the ACL; to allow harvest of shelf rockfish without exceeding the ACL; and to allow LEFG and OA fixed gear fishermen to retain incidental catch of bocaccio, in response to significant recent recruitment events, without exceeding the ACL. These changes in the LEFG and OA fixed gear fisheries continue to allow fishermen opportunities to harvest available stocks while staying within their ACLs. If this rule is not implemented immediately, the public could have incorrect information regarding allowed LEFG and OA trip limits which would cause confusion and be inconsistent with the intent of the Council. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change by August 13, 2013, allows harvest as intended by the Council, consistent with the best scientific information available. These changes allow harvest in fisheries that are important to coastal communities and in a manner that prevents ACLs of overfished and target species from being exceeded.

No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established for 2013–2014.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the PCGFMP goals and objectives of managing for appropriate harvest levels while providing for year-

round fishing and marketing opportunities.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: August 7, 2013.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

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■ 2. Tables 2 (North) and 2 (South) to part 660, subpart E are revised to read as follows:

**Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 8012013

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[1/]:** | | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[1/] | | | | | |
| 2 | 46°16' N. lat. - 42°00' N. lat. | 30 fm line[1/] - 100 fm line[1/] | | | | | |
| 3 | 42°00' N. lat. - 40°10' N. lat. | 20 fm depth contour - 100 fm line[1/] | | | | | |
| **See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | | |
| State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | | |
| 4 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 4,000 lb/ 2 months | | | | | |
| 5 | **Pacific ocean perch** | 1,800 lb/ 2 months | | | | | |
| 6 | **Sablefish** | 950 lb/ week, not to exceed 2,850 lb/ 2 months | | | 1,110 lb/ week, not to exceed 3,300 lb/ 2 months | | |
| 7 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 8 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | 2,500 lb/ 2 months | | |
| 9 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs. | | | | | |
| 10 | **Arrowtooth flounder** | | | | | | |
| 11 | **Petrale sole** | | | | | | |
| 12 | **English sole** | | | | | | |
| 13 | **Starry flounder** | | | | | | |
| 14 | **Other flatfish[3/]** | | | | | | |
| 15 | **Whiting** | 10,000 lb/ trip | | | | | |
| 16 | **Minor shelf rockfish[2/], Shortbelly, Widow & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 17 | **Canary rockfish** | CLOSED | | | | | |
| 18 | **Yelloweye rockfish** | CLOSED | | | | | |
| 19 | **Minor nearshore rockfish & Black** | | | | | | |
| 20 | North of 42°00' N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue rockfish[4/] | | | | | |
| 21 | 42°00' N. lat. - 40°10' N. lat. | 8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish | | | | | |
| 22 | **Lingcod[5/]** | CLOSED | | 800 lb/ 2 months | | 400 lb/ month | CLOSED |
| 23 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 24 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 25 | **Longnose skate** | Unlimited | | | | | |
| 26 | **Other fish[6/]** | Unlimited | | | | | |

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 8012013

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[1/]:** | | | | | | |
| 1 | 40°10' N. lat. - 34°27' N. lat. | 30 fm line[1/] - 150 fm line[1/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[1/] - 150 fm line[1/] (also applies around islands) | | | | | |
| | **See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish | | | | | |
| 4 | **Splitnose rockfish** | 40,000 lb/ 2 months | | | | | |
| 5 | **Sablefish** | | | | | | |
| 6 | 40°10' N. lat. - 36°00' N. lat. | 950 lb/ week, not to exceed 2,850 lb/ 2 months | | | 1,110 lb/ week, not to exceed 3,300 lb/ 2 months | | |
| 7 | South of 36°00' N. lat. | 1,880 lb/ week[3/] | | | | | |
| 8 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 9 | **Shortspine thornyhead** | | | | | | |
| 10 | 40°10' N. lat. - 34°27' N. lat. | 2,000 lb/ 2 months | | | 2,500 lb/ 2 months | | |
| 11 | South of 34°27' N. lat. | 3,000 lb/ 2 months | | | | | |
| 12 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs. | | | | | |
| 13 | **Arrowtooth flounder** | | | | | | |
| 14 | **Petrale sole** | | | | | | |
| 15 | **English sole** | | | | | | |
| 16 | **Starry flounder** | | | | | | |
| 17 | **Other flatfish[3/]** | | | | | | |
| 18 | **Whiting** | 10,000 lb/ trip | | | | | |
| 19 | **Minor shelf rockfish[2/], Shortbelly, Widow rockfish (including Bocaccio and Chilipepper between 40°10' - 34°27' N. lat.)** | | | | | | |
| 20 | 40°10' N. lat. - 34°27' N. lat. | Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper. | | | | | |
| 21 | South of 34°27' N. lat. | 3,000 lb/ 2 months | CLOSED | 3,000 lb/ 2 months | 4,000 lb/ 2 months | | |
| 22 | **Chilipepper** | | | | | | |
| 23 | 40°10' N. lat. - 34°27' N. lat. | Chilipepper included under minor shelf rockfish, shortbelly, widow rockfish and bocaccio limits - - See above | | | | | |
| 24 | South of 34°27' N. lat. | 2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA | | | | | |
| 25 | **Canary rockfish** | CLOSED | | | | | |
| 26 | **Yelloweye rockfish** | CLOSED | | | | | |
| 27 | **Cowcod** | CLOSED | | | | | |
| 28 | **Bronzespotted rockfish** | CLOSED | | | | | |
| 29 | **Bocaccio** | | | | | | |
| 30 | 40°10' N. lat. - 34°27' N. lat. | Bocaccio included under Minor shelf rockfish, shortbelly, widow rockfish & chilipepper limits - - See above | | | | | |
| 31 | South of 34°27' N. lat. | 300 lb/ 2 months | CLOSED | 300 lb/ 2 months | 500 lb/ 2 months | | |

TABLE 2 (South)

*Table 2 (South). Continued*

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 32 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 33 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 1,000 lb/ 2 months |
| 34 | Deeper nearshore | | | | | | |
| 35 | 40°10' N. lat. - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | 900 lb/ 2 months | | |
| 36 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | |
| 37 | California scorpionfish | 1,200 lb/ 2 months[6/] | CLOSED | 1,200 lb/ 2 months | 1,200 lb/ 2 months | | |
| 38 | **Lingcod**[5/] | CLOSED | | 800 lb/ 2 months | | 400 lb/ month | CLOSED |
| 39 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 40 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 41 | **Longnose skate** | Unlimited | | | | | |
| 42 | **Other fish**[6/] | Unlimited | | | | | |

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish south of 36° N. lat. from January through December: 1,930 lb per week.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

■ 3. Table 3 (North) and 3 (South) to part 660, subpart F are revised to read as follows:

**Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 8012013

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[1/]:** | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[1/] | | | | | |
| 2 | 46°16' N. lat. - 42°00' N. lat. | 30 fm line[1/] - 100 fm line[1/] | | | | | |
| 3 | 42°00' N. lat. - 40°10' N. lat. | 20 fm depth contour - 100 fm line[1/] | | | | | |
| | **See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | |
| 4 | **Minor slope rockfish[2/] & Darkblotched rockfish** | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 5 | **Pacific ocean perch** | 100 lb/ month | | | | | |
| 6 | **Sablefish** | 300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 1,400 lb/ 2 months | | | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months | | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months |
| 7 | **Thornyheads** | CLOSED | | | | | |
| 8 | **Dover sole** | 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 9 | **Arrowtooth flounder** | | | | | | |
| 10 | **Petrale sole** | | | | | | |
| 11 | **English sole** | | | | | | |
| 12 | **Starry flounder** | | | | | | |
| 13 | **Other flatfish[3/]** | | | | | | |
| 14 | **Whiting** | 300 lb/ month | | | | | |
| 15 | **Minor shelf rockfish[2/], Shortbelly, Widow & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 16 | **Canary rockfish** | CLOSED | | | | | |
| 17 | **Yelloweye rockfish** | CLOSED | | | | | |
| 18 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 19 | North of 42°00' N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish | | | | | |
| 20 | 42°00' N. lat. - 40°10' N. lat. | 8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish | | | | | |
| 21 | **Lingcod[5/]** | CLOSED | | 400 lb/ month | | | CLOSED |
| 22 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 23 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 24 | **Longnose skate** | Unlimited | | | | | |
| 25 | **Other fish[6/]** | Unlimited | | | | | |

TABLE 3 (North)

*Table 3 (North). Continued*

TABLE 3 (North) cont'd

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 26 | **SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)* | | | | | | |
| 27 | North | Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here. | | | | | |
| 28 | **PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)* | | | | | | |
| 29 | North | **Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.**

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 8012013

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[1/]:** | | | | | | |
| 1 | 40°10' N. lat. - 34°27' N. lat. | 30 fm line[1/] - 150 fm line[1/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[1/] - 150 fm line[1/] (also applies around islands) | | | | | |
| | **See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish | | | | | |
| 4 | **Splitnose rockfish** | 200 lb/ month | | | | | |
| 5 | **Sablefish** | | | | | | |
| 6 | 40°10' N. lat. - 36°00' N. lat. | 300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 1,400 lb/ 2 months | | | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months | | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months |
| 7 | South of 36°00' N. lat. | 300 lb/ day, or 1 landing per week of up to 1,460 lb, not to exceed 2,920 lb/ 2 months[3/] | | | | | |
| 8 | **Thornyheads** | | | | | | |
| 9 | 40°10' N. lat. - 34°27' N. lat. | CLOSED | | | | | |
| 10 | South of 34°27' N. lat. | 50 lb/ day, no more than 1,000 lb/ 2 months | | | | | |
| 11 | **Dover sole** | 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 12 | **Arrowtooth flounder** | | | | | | |
| 13 | **Petrale sole** | | | | | | |
| 14 | **English sole** | | | | | | |
| 15 | **Starry flounder** | | | | | | |
| 16 | **Other flatfish[3/]** | | | | | | |
| 17 | **Whiting** | 300 lb/ month | | | | | |
| 18 | **Minor shelf rockfish[2/], Shortbelly, Widow rockfish and Chilipepper** | | | | | | |
| 19 | 40°10' N. lat. - 34°27' N. lat. | 300 lb/ 2 months | CLOSED | | 200 lb/ 2 months | | 300 lb/ 2 months |
| 20 | South of 34°27' N. lat. | 750 lb/ 2 months | | | 750 lb/ 2 months | | 1,000 lb/ 2 months |
| 21 | **Canary rockfish** | CLOSED | | | | | |
| 22 | **Yelloweye rockfish** | CLOSED | | | | | |
| 23 | **Cowcod** | CLOSED | | | | | |
| 24 | **Bronzespotted rockfish** | CLOSED | | | | | |
| 25 | **Bocaccio** | | | | | | |
| 26 | 40°10' N. lat. - 34°27' N. lat. | 200 lb/ 2 months | CLOSED | | 100 lb/ 2 months | | 200 lb/ 2 months |
| 27 | South of 34°27' N. lat. | 100 lb/ 2 months | | | 100 lb/ 2 months | | 200 lb/ 2 months |

TABLE 3 (South)

*Table 3 (South). Continued*

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 28 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 29 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 1,000 lb/ 2 months |
| 30 | Deeper nearshore | | | | | | |
| 31 | 40°10' N. lat. - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | 900 lb/ 2 months | | |
| 32 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | |
| 33 | California scorpionfish | 1,200 lb/ 2 months | CLOSED | 1,200 lb/ 2 months | | | |
| 34 | **Lingcod**[5/] | CLOSED | | 400 lb/ month | | | CLOSED |
| 35 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 36 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 37 | **Longnose skate** | Unlimited | | | | | |
| 38 | **Other fish**[6/] | Unlimited | | | | | |
| 39 | **RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL** | | | | | | |
| 40 | **NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:** | | | | | | |
| 41 | *40° 10' N. lat. - 38° 00' N. lat.* | *100 fm line*[1/] *- 200 fm line*[1/] | *100 fm line*[1/] *- 150 fm line*[1/] | | | | *100 fm line*[1/] *- 200 fm line*[1/] |
| 42 | *38° 00' N. lat. - 34° 27' N. lat.* | *100 fm line*[1/] *- 150 fm line*[1/] | | | | | |
| 43 | *South of 34° 27' N. lat.* | *100 fm line*[1/] *- 150 fm line*[1/] *along the mainland coast; shoreline - 150 fm line*[1/] *around islands* | | | | | |
| 44 | | Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31). | | | | | |
| 45 | **PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)* | | | | | | |
| 46 | South | Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |

**TABLE 3 (South) cont'd**

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish south of 36° N. lat. from January through December: 300 lb per day, or 1 landing per week of up to 1,525 lb, not to exceed 3,050 lb/2 months

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

[FR Doc. 2013–19602 Filed 8–12–13; 8:45 a.m.]
**BILLING CODE 3510–22–C**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 121018563–3148–02]**

**RIN 0648–XC803**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is reallocating the projected unused amounts of the Aleut Corporation's pollock directed fishing allowance from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. This action is necessary to provide opportunity for harvest of the 2013 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), August 13, 2013, until 2400 hrs, December 31, 2013, Alaska local time.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2013 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 5,000 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013) and reallocation (78 FR 14932, March 8, 2013).

As of August 6, 2013, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 2,500 mt of Aleut Corporation's DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 2,500 mt of Aleut Corporation's DFA from the Aleutian Islands subarea to the 2013 Bering Sea subarea allocations. The 2,500 mt of pollock is apportioned to the AFA inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2013 Bering Sea pollock incidental catch allowance remains at 33,699 mt. As a result, the harvest specifications for pollock in the Aleutian Islands subarea included in the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013, 78 FR 14932, March 8, 2013) are revised as follows: 2,500 mt to Aleut Corporation's DFA. Furthermore, pursuant to § 679.20(a)(5), Table 3 of the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013, 78 FR 14932, March 8, 2013) is revised to make 2013 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2013 Aleut Corporation and AFA pollock allocations established at § 679.20(a)(5).

TABLE 3—FINAL 2013 AND 2014 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

| Area and sector | 2013 Allocations | 2013 A season [1] | | 2013 B season [1] | 2014 Allocations | 2014 A season [1] | | 2014 B season [1] |
|---|---|---|---|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA | | A season DFA | SCA harvest limit [2] | B season DFA |
| Bering Sea subarea | 1,261,900 | n/a | n/a | n/a | 1,247,000 | n/a | n/a | n/a |
| CDQ DFA | 126,600 | 50,640 | 35,448 | 75,960 | 124,700 | 49,880 | 34,916 | 74,820 |
| ICA [1] | 33,699 | n/a | n/a | n/a | 33,669 | n/a | n/a | n/a |
| AFA Inshore | 550,801 | 220,320 | 154,224 | 330,480 | 544,316 | 217,726 | 152,408 | 326,589 |
| AFA Catcher/Processors [3] | 440,640 | 176,256 | 123,379 | 264,384 | 435,452 | 174,181 | 121,927 | 261,271 |
| Catch by C/Ps | 403,186 | 161,274 | n/a | 241,912 | 398,439 | 159,376 | n/a | 239,063 |
| Catch by CVs [3] | 37,454 | 14,982 | n/a | 22,473 | 37,013 | 14,805 | n/a | 22,208 |
| Unlisted C/P Limit [4] | 2,203 | 881 | n/a | 1,322 | 2,177 | 871 | n/a | 1,306 |
| AFA Motherships | 110,160 | 44,064 | 30,845 | 66,096 | 108,863 | 43,545 | 30,482 | 65,318 |
| Excessive Harvesting Limit [5] | 192,780 | n/a | n/a | n/a | 190,510 | n/a | n/a | n/a |
| Excessive Processing Limit [6] | 330,480 | n/a | n/a | n/a | 326,589 | n/a | n/a | n/a |
| Total Bering Sea DFA | 1,101,601 | 440,640 | 308,448 | 660,961 | 1,088,631 | 435,452 | 304,817 | 653,179 |
| Aleutian Islands subarea [1] | 4,100 | n/a | n/a | n/a | 19,000 | n/a | n/a | n/a |
| CDQ DFA | 0 | 0 | n/a | 0 | 1,900 | 760 | n/a | 1,140 |
| ICA | 1,600 | 800 | n/a | 800 | 1,600 | 800 | n/a | 800 |
| Aleut Corporation | 2,500 | 2,500 | n/a | 0 | 15,500 | 14,360 | n/a | 1,140 |

TABLE 3—FINAL 2013 AND 2014 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

| Area and sector | 2013 Allocations | 2013 A season [1] | | 2013 B season [1] | 2014 Allocations | 2014 A season [1] | | 2014 B season [1] |
|---|---|---|---|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA | | A season DFA | SCA harvest limit [2] | B season DFA |
| Bogoslof District ICA [7] ..... | 100 | n/a | n/a | n/a | 100 | n/a | n/a | n/a |

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)*(i)* and *(ii),* the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

## Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Aleutian Islands subarea pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 6, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 8, 2013.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–19611 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 78, No. 156
Tuesday, August 13, 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 ENERGY

### 10 CFR Part 431

**[Docket No. EERE–2013–BT–STD–0030]**

**RIN 1904–AD01**

## Energy Conservation Program for Certain Commercial and Industrial Equipment: Proposed Determination of Natural Draft Commercial Packaged Boilers as Covered Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed determination of coverage.

**SUMMARY:** The U.S. Department of Energy (DOE) proposes to determine that natural draft commercial packaged boilers meet the criteria for covered equipment under Part A–1 of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE proposes that classifying equipment of such type as covered equipment is necessary to carry out the purpose of Part A–1 of EPCA, which is to improve the efficiency of certain industrial equipment to conserve the energy resources of the Nation.

**DATES:** DOE will accept written comments, data, and information on this notice, but no later than September 12, 2013.

**ADDRESSES:** Interested persons are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2013–BT–STD–0030 or Regulation Identifier Number (RIN) 1904–AD01, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PkgdBoilers2013STD0030@ee.doe.gov.* Include EERE–2013–BT–STD–0030 and/or RIN 1904–AD01 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI of this document (Public Participation).

*Docket:* The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials (search EERE–2013–BT–STD–0030). All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/74.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See section VI for further information on how to submit comments through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *commercial_packaged_boilers@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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## I. Statutory Authority

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency for consumer products and certain commercial

equipment. Part C of Title III of EPCA (42 U.S.C. 6311–6317), which was re-designated for editorial reasons as Part A–1 upon codification in the U.S. Code, establishes the ''Energy Conservation Program for Certain Industrial Equipment,'' which covers certain commercial and industrial equipment (hereafter referred to as ''covered equipment'').

EPCA identifies 11 types of covered equipment and sets forth a twelfth provision for any other type of equipment which the Secretary of Energy (Secretary) classifies as covered equipment. (42 U.S.C. 6311(1)(A)–(L)) EPCA also provides for the types of equipment that can be classified as covered ''industrial equipment'' in addition to the equipment enumerated under 42 U.S.C. 6311(1), which includes packaged boilers as covered industrial equipment. (42 U.S.C. 6311(2)(B)) Further, pursuant to EPCA, industrial equipment must also, without regard to whether such equipment is in fact distributed in commerce for industrial or commercial use, be of a type:

(1) Which in operation consumes, or is designed to consume, energy;

(2) which to any significant extent, is distributed in commerce for industrial or commercial use; and

(3) which is not a ''covered product'' as defined in 42 U.S.C. 6291(2) of EPCA, other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c). (42 U.S.C. 6311(2)(A))

To classify equipment as covered commercial or industrial equipment, the Secretary must determine that classifying the equipment as covered equipment is necessary for the purposes of Part A–1 of EPCA. In general, the purpose of Part A–1 is to improve the efficiency of certain industrial equipment, such as packaged boilers, and to conserve the energy resources of the Nation. (42 U.S.C. 6312 (a), (b)).

## II. Current Rulemaking Process

DOE has previously conducted energy conservation standards rulemakings for natural draft commercial packaged boilers. As explained in section IV.C, DOE is undertaking this coverage determination to explicitly clarify its statutory authority under EPCA to cover natural draft commercial packaged boilers. Following public comment, DOE intends to issue a final determination of coverage for this equipment, and would consider amended energy conservation standards and test procedures for this equipment as part of its upcoming rulemaking for commercial packaged boilers.

With respect to test procedures, DOE's existing test procedures for commercial packaged boilers contain provisions for measuring the energy efficiency of natural draft commercial packaged boilers. As with any of DOE's test procedures, the current test procedure allows for measurement of the energy efficiency, energy use, or estimated annual operating cost of natural draft commercial packaged boilers during a representative average use cycle or period of use in a manner that is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Although DOE's existing test procedure has generally proven adequate for testing natural draft commercial packaged boilers, DOE may consider any necessary amendments to these test procedures in the context of its upcoming ''7-year-lookback'' test procedure rulemaking. (42 U.S.C. 6314(a)(1)) In a typical test procedure rulemaking, DOE initially prepares a test procedure notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In amending test procedures, DOE takes into account relevant information, including technological developments relating to energy use or energy efficiency of natural draft commercial packaged boilers.

With respect to energy conservation standards, DOE typically prepares initially an energy conservation standards rulemaking Framework Document (the Framework Document). The Framework Document explains the issues, analyses, and process that it is considering for the development of energy conservation standards. After DOE receives comments on the Framework Document, DOE typically prepares an energy conservation standards rulemaking preliminary analysis and technical support document (TSD) for the preliminary analysis. The preliminary analysis typically provides initial draft analyses of potential energy conservation standards on consumers, manufacturers, and the Nation. These steps are not legally required.

DOE is required to publish a NOPR setting forth DOE's proposed energy conservation standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's analysis are provided in a TSD that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). DOE affords interested persons an opportunity during a period of not less than 60 days after the publication of the NOPR to provide oral and written comment. (42 U.S.C. 6295(p)(2)) After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any amended energy conservation standards for natural draft commercial packaged boilers. (42 U.S.C. 6295(p)(3)).

## III. Definition(s)

DOE is considering a definition for ''Natural Draft Commercial Packaged Boiler'' to clarify coverage of any potential test procedure or energy conservation standard amendments that may arise subsequent to today's proposed determination. There is currently no statutory definition of ''natural draft commercial packaged boiler,'' so DOE is considering the following definition of ''natural draft commercial packaged boiler'' to provide clarity for interested parties as it continues its analyses:

*Natural draft commercial packaged boiler* means a commercial packaged boiler designed to operate with negative pressure in the firebox and in the flue connection created by a chimney or the height of the unit itself, up to the draft control device. Such boilers do not require mechanical drafting equipment to vent combustion gases, but may include mechanical devices such as mechanical flue or stack dampers to limit the heat losses through the flue vent during off-cycle.

DOE seeks comments from interested parties about this definition for ''natural draft commercial packaged boiler.''

## IV. Evaluation of Natural Draft Commercial Packaged Boilers as a Covered Equipment

The following sections describe DOE's evaluation of whether natural draft commercial packaged boilers fulfill the criteria for being added as covered equipment pursuant to 42 U.S.C. 6311(2) and 42 U.S.C. 6312.

Packaged boilers are listed as a type of industrial equipment at 42 U.S.C. 6311(2)(B). The following discussion addresses DOE's consideration of the three requirements of 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312.

### *A. Energy Consumption in Operation*

Based on the Energy Information Administration's (EIA) 2013 *Annual Energy Outlook* (*AEO*) and 2003 Commercial Building Energy Consumption Survey (CBECS) data, DOE estimated that the annual energy use of gas and oil-fired commercial packaged boilers was 0.73 quad in

2012.[1] [2] [3] Based on the number of natural draft commercial packaged boiler models in the 2013 Air-Conditioning, Heating, and Refrigeration Institute (AHRI) certification directory (41 percent average for both gas and oil-fired commercial packaged boilers), DOE estimated that the annual energy use of natural draft gas and oil-fired commercial packaged boilers was 0.30 quad in 2012, or the equivalent of approximately 51.7 million barrels of oil. Based on CBECS 2003 data, DOE estimated that, on average, existing gas and oil-fired commercial packaged boilers consume about 1,362 MMBtu/yr or about 400,000 kWh/yr per building that use natural draft gas and oil-fired commercial packaged boilers.[4] [5]

*B. Distribution in Commerce*

Natural draft commercial packaged boilers are distributed both in the commercial and industrial sectors. During the analysis leading to the 2009 commercial packaged boilers final rule (74 FR 36312 (July 22, 2009)), DOE obtained from AHRI an estimate of annual shipments of commercial packaged boilers that, at the time, were approximately 36,000 units. (2009 Technical Support Document, Chapter 6, Shipment Analysis [6]) Since no recent shipments data are available, DOE plans to assume that the same number of units will be shipped in 2013 (about 36,000 gas and oil-fired commercial packaged boilers). Since 41 percent of commercial packaged boilers models in the 2013 AHRI Directory [7] are natural draft commercial packaged boilers, DOE estimates that about 15,000 natural draft commercial packaged boilers will be shipped domestically in 2013.

*C. Prior Inclusion as a Covered Product*

Natural draft commercial packaged boilers are not currently included as covered products under Title 10 of the Code of Federal Regulations, part 430 (10 CFR part 430). However, as explained below, under DOE's interpretation of the relevant statutory provisions, natural draft commercial packaged boilers are currently included as covered equipment under subpart E of 10 CFR part 431.

*D. Coverage Necessary To Carry Out Purposes of Part A–1 of the Energy Policy and Conservation Act*

The purpose of part A–1 of EPCA is to improve the energy efficiency of certain industrial equipment to conserve the energy resources of the Nation. Commercial packaged boilers are covered equipment under the statute. Until now, DOE has not drawn a distinction between a commercial packaged boiler that is manufactured and shipped as a natural draft model or a mechanical draft model. Consistent with this position, DOE adopted energy conservation standards for natural draft commercial packaged boilers in a final rule published in the **Federal Register** on July 22, 2009, which was consistent with the efficiency levels contained in the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1–2007. 74 FR 36312.

DOE continues to conclude that, from a technical perspective, natural draft commercial packaged boilers are similar in purpose and function to their mechanical-draft counterparts. Nevertheless, DOE is initiating this coverage determination for natural draft commercial packaged boilers, because explicit coverage of natural draft commercial packaged boilers is necessary to carry out the purposes of part A–1 of EPCA. Coverage will promote the conservation of energy and provide a more level playing field to the variety of commercial packaged boilers on the market, thereby discouraging potential substitution effects. Beyond the energy conservation standards currently in place for natural draft commercial packaged boilers, DOE will commence a rulemaking to consider amending the energy conservation standards both for commercial packaged boilers with mechanical draft equipment and, pending the outcome of today's proposed coverage determination, natural draft commercial packaged boilers. Amended energy conservation standards that may result after such final coverage determination would help to capture some portion of the potential for improving efficiency of natural draft commercial packaged boilers.

In view of all the information in section IV of this notice, DOE proposes to determine that natural draft commercial packaged boilers qualify as covered equipment under part A–1 of Title III of EPCA, as amended. (42 U.S.C. 6311 *et seq.*)

## V. Procedural Issues and Regulatory Review

DOE has reviewed its proposed determination of natural draft commercial packaged boilers under the following Executive Orders and Acts.

*A. Review Under Executive Order 12866*

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impact

[1] Energy Information Administration (EIA), 2013 *Annual Energy Outlook* (*AEO*) Full Version (Available at: *http://www.eia.gov/forecasts/aeo/*) (Last accessed April 15, 2013).

[2] Energy Information Administration (EIA), 2003 Commercial Building Energy Consumption Survey (CBECS) (Available at: *http://www.eia.gov/consumption/commercial/*) (Last accessed April 10, 2013).

[3] *AEO 2013* provides total space heating energy use for commercial buildings, In 2012, *AEO 2013* estimates that 1.51 quads is used for gas space heating and 0.115 quad is used for oil space heating in the U.S. commercial buildings. To determine the fraction of space heating in commercial buildings provided by commercial gas and oil-fired packaged boilers, DOE used CBECS estimates, which show that 43 percent of gas heating is provided by gas boilers and 74 percent of oil heating is provided by oil-fired boilers.

[4] Average energy use of gas and oil boilers per building in CEBCS 2003 is equal to 1,555 MMBtu/yr. DOE adjusted this value to reflect a 6.9-percent improvement in existing buildings compared to 2003 buildings based on *AEO 2013* data (Available at: *http://www.eia.gov/forecasts/aeo/assumptions/pdf/commercial.pdf*). DOE also adjusted the energy use data to normal weather conditions using the 10-year average heating degree-days (HDD) (2003–2012) compared to 2003 HDDs based on National Oceanic and Atmospheric Administration (NOAA) data (Available at: *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*), which resulted in a 5.1-percent decrease in heating energy consumption.

[5] Conversion: 1 kWh=3412 Btu.

[6] See *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0013-0011*.

[7] Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Commercial Packaged Boiler Certification Directory (April 2013) (Available at: *http://www.ahridirectory.org/*) (Last accessed April 15, 2013).

of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (Feb. 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's Web site at *http://energy.gov/gc/office-general-counsel.*

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE certifies that the proposed determination, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000). These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for the relevant NAICS classification code 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing,'' is 500 employees. To determine whether any manufacturers of natural draft commercial packaged boilers fall below this threshold number, DOE assembled an extensive database of commercial packaged boiler models and manufacturers based on surveys of the AHRI certification directory,[8] the California Energy Commission (CEC) appliance database,[9] and additional industry and manufacturer Web sites. DOE used this database to identify manufacturers of natural draft commercial packaged boilers for further analysis. Using publically-available data from sources such as Hoover's online database [10] and manufacturer Web sites, DOE evaluated each manufacturer to determine if they met the SBA's definition of a ''small business manufacturing facility'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified seven small businesses that manufacture natural draft commercial packaged boilers.

If adopted, today's proposed determination would not amend standards and would only reaffirm DOE's authority to cover natural draft commercial packaged boilers. The proposed determination also does not amend any test procedures. Economic impacts on small entities would be considered in the context of such rulemakings.

DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act of 1995*

This proposed determination, which proposes to determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment, will impose no new information or recordkeeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

### *D. Review Under the National Environmental Policy Act of 1969*

In this notice, DOE proposes to positively determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment. Environmental impacts would be explored in any future energy conservation standards rulemaking for natural draft commercial packaged boilers. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated.'' (10 CFR 1021.213(b)) This proposed determination would only determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order (E.O.) 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE

[8] *See* Air-Conditioning, Heating, and Refrigeration Institute: Certification Directory (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*).

[9] *See* California Energy Commission: Appliance Database (Available at: *http://www.appliances.energy.ca.gov/*).

[10] *See* Hoover's Database (Available at: *http://www.hoovers.com/).*

completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at *http://energy.gov/gc/office-general-counsel.*) DOE reviewed today's proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA requirements do not apply.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516 note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that natural draft commercial packaged boilers meet the criteria for classification as covered equipment would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

*L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to amend energy conservation standards for natural draft commercial packaged boilers.

## VI. Public Participation

*A. Submission of Comments*

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether natural draft commercial packaged boilers are covered equipment under EPCA.

Comments, data, and information submitted to DOE's email address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of

encryption, and wherever possible, comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

*B. Issues on Which the Department of Energy Seeks Comments*

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for natural draft commercial packaged boilers:

- Definition of ''natural draft commercial packaged boiler'';
- Whether classifying natural draft commercial packaged boilers as covered equipment is necessary to carry out the purposes of Part A–1 of EPCA; and
- Availability or lack of availability of technologies for improving the energy efficiency of natural draft commercial packaged boilers.

DOE invites all interested parties to submit, in writing and by September 12, 2013, comments and information on matters addressed in this notice and on other matters relevant to a determination for natural draft commercial packaged boilers. DOE is also interested in receiving views concerning other issues relevant to amending the test procedure and energy conservation standards for natural draft commercial packaged boilers.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE confirms in the final determination that natural draft commercial packaged boilers qualify as covered equipment, DOE may consider amendments to the test procedure and energy conservation standards for natural draft commercial packaged boilers as part of the upcoming rulemaking for commercial packaged boilers generally. Members of the public will be given an opportunity to submit written and oral comments on any proposed amended test procedure and standards.

**List of Subjects in 10 CFR Part 431**

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 7, 2013.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2013–19560 Filed 8–12–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0725; Directorate Identifier 98–CE–01–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Maule Aerospace Technology, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise airworthiness directive (AD) 98–15–18 that applies to certain Maule Aerospace Technology, Inc. M–4, M–5, M–6, M–7, MT–7, MX–7, MXT–7, and M–8 airplanes that are equipped with rear wing lift struts, part number (P/N) 2079E, and/or front wing lift struts, P/N 2080E. AD 98–15–18 currently requires repetitively inspecting certain wing lift struts for internal corrosion and replacing of any wing lift strut where corrosion is found. Since we issued AD 98–15–18, we have been informed by the manufacturer that Model MXT–7–420 airplanes are no longer in existence, are no longer type certificated, and should be removed from the Applicability section. We have also been informed that paragraph (b) in AD 98–15–18 is being misinterpreted and is causing confusion. This proposed AD would remove Model MXT–7–420 airplanes from the Applicability section and clarify the intent of the language currently in paragraph (b) of AD 98–15–18. This proposed AD would retain all other requirements of the existing AD. We are proposing this AD to correct the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

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

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

For service information identified in this proposed AD, contact Maule Air, Inc., 2099 GA Hwy 133 South, Moultrie, Georgia 31768; telephone: (229) 985–2045; fax: (229) 890–2402; Internet: *http://www.mauleairinc.com/pdf/servicebulletins/service_bulletin_11_old.pdf.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0725; Directorate Identifier 98–CE–01–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On July 14, 1998, we issued AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998), and later reissued with a correction on September 18, 1998 (63 FR 51520, September 28, 1998), (''AD 98–15–18''), for certain Maule Aerospace Technology Corp. (currently Maule Aerospace Technology, Inc.) M–4, M–5, M–6, M–7, MX–7, and MXT–7 series airplanes and Models MT–7–235 and M–8–235 airplanes equipped with original equipment (OEM) manufacture Maule Aerospace Technology, Inc. rear wing lift struts, part number (P/N) 2079E, and/or front wing lift struts, P/N 2080E (or FAA-approved equivalent part numbers). AD 98–15–18 superseded AD 95–26–18, Amendment 39–9476 (61 FR 623, January 9, 1996), (''AD 95–26–18''), and requires repetitively inspecting the wing lift struts for corrosion and replacing any wing lift strut where corrosion is found with either an OEM airworthy part or a new sealed wing lift strut. Installing a new sealed wing lift strut is a terminating action for the repetitive inspection and replacement requirements.

AD 95–26–18 required a one-time inspection of certain wing lift struts for internal corrosion and replacement of any wing lift strut where corrosion was found. AD 95–26–18 resulted from reports of an accident where the wing separated from one of the affected airplanes.

AD 98–15–18 resulted from a need to require the inspections to be repetitive and to provide the option of using ultrasonic procedures to accomplish the inspection requirements.

We issued both ADs to detect and correct corrosion on the front and rear wing lift struts, which could cause the wing lift strut to fail. This failure could result in the wing separating from the airplane.

**Actions Since AD 98–15–18 Was Issued**

Since we issued AD 98–15–18, we have been informed by the manufacturer that only one Model MXT–7–420 airplane was built and was later dismantled and removed from the type certificate data sheet (TCDS).

We have also been informed that the language in paragraph (b) of AD 98–15–18 has been misinterpreted and has caused confusion. Paragraph (b) of AD 98–15–18 currently states, ''If holes are drilled into the sealed wing lift strut assemblies installed as specified in paragraph (a)(4) of this AD in order to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in either paragraph (a)(1) or (a)(2), including all subparagraphs, of this AD.''

Our intention was to specify that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal is never improperly broken. We also intended to specify that if the seal is improperly broken, then that wing lift strut becomes subject to continued repetitive inspections.

We did not intend to promote drilling holes into or otherwise unsealing a sealed strut. Properly unsealing and resealing a sealed wing lift strut is still considered a terminating action for the repetitive inspection requirements of this proposed AD as long as all appropriate regulations and issues are considered, such as static strength, fatigue, material effects, immediate and long-term (internal and external) corrosion protection, resealing methods, etc. Current FAA regulations in 14 CFR 43.13(b) specify that maintenance performed will result in the part's condition to be at least equal to its original or properly altered condition. There are provisions in this proposed AD for approving such actions as an alternative method of compliance (AMOC).

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 98–15–18 and would remove Model MXT–7–420 airplanes from the Applicability section. This proposed AD would also clarify our intent of required actions if the seal on a sealed wing lift strut is ever improperly broken.

**Paragraph Designation Changes to AD 98–15–18**

Since AD 98–15–18 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

TABLE 1—REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 99–01–05 | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) | paragraph (h) |
| paragraph (a)(1) | paragraph (i)(1) |
| paragraph (a)(1)(i) | paragraph (i)(1)(i) |
| paragraph (a)(1)(ii) | paragraph (i)(1)(ii) |
| paragraph (a)(2) | paragraph (i)(2) |
| paragraph (a)(2)(i) | paragraph (i)(2)(i) |
| paragraph (a)(2)(ii) | paragraph (i)(2)(ii) |
| paragraph (a)(3) | paragraph (j)(1) |
| paragraph (a)(4) and (c) | paragraph (j)(2) |
| paragraph (b) | removed |

**Costs of Compliance**

We estimate that this proposed AD affects 1,196 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD. However, the only difference in the costs presented below and the costs associated with AD 98–15–18 is the change in the labor rate from $65 per hour to $85 per hour.

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection of the wing lift struts. | 11 × $85 per hour = $935 per inspection cycle. | $40 | $975 per inspection cycle ..... | $1,166,100 per inspection cycle. |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

| Action | Labor cost per wing lift strut | Parts cost per wing lift strut | Cost per product per wing lift strut |
|---|---|---|---|
| Replacement of the wing lift strut ..... | 5 work-hours × $85 per hour = $425 ..... | $500 | $925 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998), and adding the following new AD:

**Maule Aerospace Technology, Inc.:** Docket No. FAA–2013–0725; Directorate Identifier 98–CE–01–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 27, 2013.

**(b) Affected ADs**

This AD revises AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998), which superseded AD 95–26–18, Amendment 39–9476 (61 FR 623, January 9, 1996.)

**(c) Applicability**

This AD applies to the following Maule Aerospace Technology, Inc. airplanes, all serial numbers, identified in table 1 of paragraph (c) of this AD, that are:

(1) Equipped with original equipment manufacturer (OEM) Maule Aerospace Technology, Inc. rear wing lift struts, part number (P/N) 2079E (or FAA-approved equivalent part numbers), and/or front wing lift struts, P/N 2080E (or FAA-approved equivalent part numbers); and

(2) certificated in any category.

TABLE 1 TO PARAGRAPH (c) OF THIS AD—APPLICABILITY

| Models | | | | |
|---|---|---|---|---|
| Bee Dee M–4 ..... | M–4 ..... | M–4C ..... | M–4S ..... | M–4T |
| M–4–180C ..... | M–4–180S ..... | M–4–180T ..... | M–4–210 ..... | M–4–210C |
| M–4–210S ..... | M–4–210T ..... | M–4–220 ..... | M–4–220C ..... | M–4–220S |
| M–4–220T ..... | M–5–180C ..... | M–5–200 ..... | M–5–210C ..... | M–5–210TC |
| M–5–220C ..... | M–5–235C ..... | M–6–180 ..... | M–6–235 ..... | M–7–235 |
| M–7–235A ..... | M–7–235B ..... | M–7–235C ..... | MT–7–235 ..... | MX–7–160 |
| MX–7–180 ..... | MX–7–180A ..... | MX–7–180B ..... | MX–7–235 ..... | MX–7–420 |
| MXT–7–160 ..... | MXT–7–180 ..... | MXT–7–180A ..... | M–8–235 | |

**Note 1 to paragraph (c) of this AD:** This AD does not apply to airplanes equipped with four Maule sealed lift struts, P/N 2200E and P/N 2201E. These sealed lift struts are identified by two raised weld spots on the upper end of the strut just below the serial number plate. Removal of the upper cuff is needed to locate the weld spots.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

The subject of this AD was originally prompted by reports of corrosion damage found on the wing lift struts. We are revising AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998), because of reports that the language currently in paragraph (b) is being misinterpreted and is causing confusion. Since we issued AD 98–15–18, we have been informed by the manufacturer that Model MXT–7–420 airplanes are no longer in existence, are no longer type certificated, and should be removed from the Applicability section. This AD removes Model MXT–7–420 airplanes from the Applicability section and clarifies the intent of the language currently in paragraph (b) of AD 98–15–18, which is being removed by this AD. Our intention was to specify that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal is never improperly broken. This AD also retains all the actions currently required in AD 98–15–18. There are no new requirements in this AD and it does not add any additional burden to the owners/operators of the affected airplanes. We are issuing this AD to detect and correct corrosion on the front and rear wing lift struts, which could cause the wing lift strut to fail. This failure could result in the wing separating from the airplane.

**(f) Paragraph Designation Changes to AD 98–15–18**

Since AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998), was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

TABLE 2 TO PARAGRAPH (f) OF THIS AD—REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 98–15–18 | Corresponding requirement in this AD |
|---|---|
| paragraph (a) | paragraph (h) |
| paragraph (a)(1) | paragraph (i)(1) |
| paragraph (a)(1)(i) | paragraph (i)(1)(i) |
| paragraph (a)(1)(ii) | paragraph (i)(1)(ii) |
| paragraph (a)(2) | paragraph (i)(2) |
| paragraph (a)(2)(i) | paragraph (i)(2)(i) |
| paragraph (a)(2)(ii) | paragraph (i)(2)(ii) |
| paragraph (a)(3) | paragraph (j)(1) |
| paragraph (a)(4) and (c) | paragraph (j)(2) |
| paragraph (b) | Removed |

**(g) Compliance**

Unless already done (compliance with AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998)), do the following actions within the compliance times specified in paragraphs (h) through (j) of this AD, including all subparagraphs.

**Note 2 to paragraph (g) of this AD:** This AD does not require any actions over that already required by AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998). This AD clarifies the FAA's intention that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal is never improperly broken. If the seal is improperly broken, then that wing lift strut becomes subject to continued repetitive inspections. We did not intend to promote drilling holes into or otherwise unsealing a sealed strut. Properly unsealing and resealing a sealed wing lift strut is still considered a terminating action for the repetitive inspection requirements of this AD as long as all appropriate regulations and issues are considered, such as static strength, fatigue, material effects, immediate and long-term (internal and external) corrosion protection, resealing methods, etc.

**(h) Remove Wing Lift Struts**

At whichever of paragraphs (h)(1), (h)(2), or (h)(3) of this AD that occurs later, remove the wing lift struts following the INSTRUCTIONS section in PART I of Maule Air, Inc. Service Bulletin (Maule SB) No. 11, dated October 30, 1995. Before further flight after the removal, do one of the actions in either paragraph (i)(1), (i)(2), (j)(1), or (j)(2) of this AD, including all subparagraphs.

(1) Upon accumulating 2 years time-in-service on an OEM Maule wing lift strut, P/N 2079E and/or P/N 2080E;

(2) Within 3 calendar months after September 9, 1998 (the effective date retained from AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998)); or

(3) Within 2 years after the last inspection done in accordance with AD 95–26–18, Amendment 39–9476 (61 FR 623, January 9, 1996) (which was superseded by AD 98–15–18).

**(i) Inspect Wing Lift Struts**

(1) Before further flight after the removal required in paragraph (h) of this AD, inspect each wing lift strut for corrosion and perceptible dents following the INSTRUCTIONS section in PART I of Maule SB No. 11, dated October 30, 1995.

(i) *If no corrosion is visible and no perceptible dents are found on any wing lift strut during the inspection required in paragraph (i)(1) of this AD,* before further flight, apply corrosion inhibitor to each wing lift strut. Apply the corrosion inhibitor following the INSTRUCTIONS section in PART I of Maule SB No. 11, dated October 30, 1995. Repetitively thereafter inspect each wing lift strut at intervals not to exceed 24 calendar months following the procedures in paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs.

(ii) *If corrosion or perceptible dents are found on any wing lift strut during the inspection required in paragraph (i)(1) of this AD or during any repetitive inspection required in paragraph (i)(1)(i) of this AD,* before further flight, replace the affected wing lift strut with one of the replacement options specified in paragraph (j)(1) or (j)(2) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

(2) Before further flight after the removal required in paragraph (h) of this AD, inspect each wing lift strut for corrosion following the procedures in the Appendix to this AD. This inspection must be done by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Non-destructive Testing or the ''Military Standard for Nondestructive Testing Personnel Qualification and Certification'' (MIL–STD–410E).

(i) If no corrosion is found on any wing lift strut during the inspection specified in paragraph (i)(2) of this AD and all requirements in the Appendix to this AD are met, before further flight apply corrosion inhibitor to each wing lift strut following INSTRUCTIONS section in PART I of Maule SB No. 11, dated October 30, 1995. Repetitively thereafter inspect each wing lift strut every 24 calendar months provided no corrosion is found and all of the requirements in the Appendix of this AD are met.

(ii) *If corrosion is found on any wing lift strut during the inspection required paragraph (i)(2) of this AD or during any repetitive inspection required in paragraph (i)(2)(i) of this AD, or if any requirement in the Appendix of this AD is not met,* before further flight after any inspection in which corrosion is found or the Appendix requirements are not met, replace the affected wing lift strut with one of the replacement options specified in paragraph (j)(1) or (j)(2) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

**(j) Wing Lift Strut Replacement Options**

(1) Install OEM Maule P/N wing lift struts (or FAA-approved equivalent part numbers) that have been inspected following the procedures in either paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs, and are found to be airworthy. Do the installations following the INSTRUCTIONS section in PART II of Maule SB No. 11, dated October 30, 1995. Repetitively thereafter inspect the newly installed wing lift struts at intervals not to exceed 24 calendar months following the procedures in either paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs.

(2) Install new Maule sealed wing lift struts, P/N 2200E or P/N 2201E, as applicable (or FAA-approved equivalent part numbers) following the INSTRUCTIONS section in PART II of Maule SB No. 11, dated October 30, 1995. Installing one of these new sealed wing lift strut assemblies terminates the repetitive inspection requirements in paragraphs (i)(1) or (i)(2) of this AD, including all subparagraphs, for that wing lift strut assembly.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Atlanta Aircraft Certification Office, (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) AMOCs approved for AD 98–15–18, Amendment 39–10669 (63 FR 39018, July 21, 1998) and AD 95–26–18, Amendment 39–9476 (61 FR 623, January 9, 1996) are approved as AMOCs for this AD.

**(l) Related Information**

(1) For more information about this AD, contact Gregory K. Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov*.

(2) For service information identified in this AD, contact Maule Air, Inc., 2099 GA Hwy 133 South, Moultrie, Georgia 31768; telephone: (229) 985–2045; fax: (229) 890–2402; Internet: *http://www.mauleairinc.com/pdf/servicebulletins/service_bulletin_11_old.pdf*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

## Appendix To Docket No. FAA–2013–0725

**Procedures and Requirements for Ultrasonic Inspection of Maule Wing Lift Struts**

**Equipment Requirements**

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to do this inspection.

2. An ultrasonic probe with the following specifications will be needed to do this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/− 0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to do this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

• **Note:** Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''

• **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

**Instrument Setup**

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the **Equipment Requirements**. Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/− 0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

**Inspection Procedure**

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the **Equipment Requirements** section.

2. Using a flexible ruler, draw a ¼-inch grid on the surface of the first 11 inches from

the lower end of the strut as shown in Maule Air, Inc. Service Bulletin No. 11, dated October 30, 1995, as applicable. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every ¼-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first ¼-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at ¼-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• **Note:** A reading shall not exceed .041 inch. If a reading exceeds .041 inch, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the **Instrument Setup** section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Maule Air, Inc. Service Bulletin No. 11, dated October 30, 1995.

10. Record the lift strut inspection in the aircraft log book.

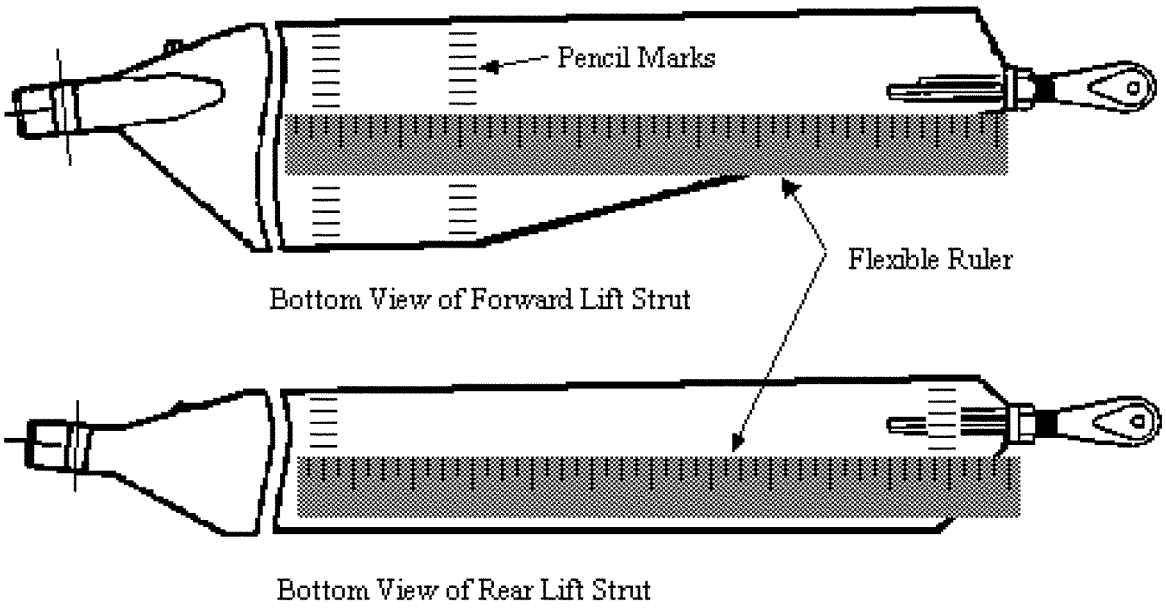


**Figure 1**

Issued in Kansas City, Missouri, on August 6, 2013.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19638 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0692; Directorate Identifier 2012–NM–024–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede airworthiness directive (AD) 2011–14–06 that applies to all Airbus Model A318, A319, A320, and A321 series airplanes. That AD currently requires revising the maintenance program. Since we issued that AD, we have determined that more restrictive limitations are necessary. This proposed AD would require revising the maintenance program to incorporate new limitations. We are proposing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0692; Directorate Identifier 2012–NM–024–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

On June 24, 2011, we issued AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), we have determined that more restrictive limitations are necessary. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0008, dated January 16, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations for Airbus aeroplanes are currently published in Airworthiness Limitations Section (ALS) documents. The airworthiness limitations applicable to the Safe Life Airworthiness Limitation Items (SL ALI) are specified in Airbus A318/A319/A320/A321 ALS Part 1, which is approved by the European Aviation Safety Agency (EASA).
> EASA AD 2006–0162 [which corresponds to FAA AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007) which was superseded by FAA AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)] was issued to require the implementation of the instructions and airworthiness limitations as specified in Airbus A318/A319/A320/A321 ALS Part 1 original issue. Failure to comply with the instructions of ALS Part 1 could result in an unsafe condition.
> This [EASA] AD retains the requirements of EASA AD 2006–0162, which is superseded, extends the applicability by adding the Models A318–121, A318–122, A320–215 and A320–216, and requires the implementation of the instructions and airworthiness limitations as specified in Airbus A318/A319/A320/A321 ALS part 1 revision 02, approved on 13 May 2011.

The unsafe condition is fatigue cracking, accidental damage, or corrosion in principal structural elements and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. The required actions also include revising the maintenance program to include Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Airbus has issued A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011; and A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation

in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD requires revisions to certain operator maintenance documents to include new actions. Compliance with these actions is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (o) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure and the continued operational safety of the airplane.

**Differences Between This AD and the MCAI or Service Information**

Although the MCAI requires revising the maintenance program to include the incorporation of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011, this AD also requires revising the maintenance program to include the incorporation of Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008. This difference has been coordinated with EASA.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 851 products of U.S. registry.

The actions that are required by AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $72,335, or $85 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory 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 removing airworthiness directive (AD) 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), and adding the following new AD:

**Airbus:** Docket No. FAA–2013–0692; Directorate Identifier 2012–NM–024–AD.

**(a) Comments Due Date**

We must receive comments by September 27, 2013.

**(b) Affected ADs**

This AD supersedes AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011).

**(c) Applicability**

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Periodic inspections.

**(e) Reason**

This AD was prompted by a determination that more restrictive limitations are necessary. We are issuing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Retained Revision of Airworthiness Limitations Section (ALS) To Incorporate Safe Life ALIs**

This paragraph restates the requirements of paragraph (g) of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011). For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes: Within 3 months after November 7, 2007 (the effective date of AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007)), revise the ALS of the Instructions for Continued Airworthiness to incorporate Sub-part 1–2, ''Life Limits,'' and Sub-part 1–3, ''Demonstrated Fatigue Lives,'' of Airbus A318/A319/A320/A321

ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006. Accomplish the actions in Sub-part 1–2, ''Life Limits,'' and Sub-part 1–3, ''Demonstrated Fatigue Lives,'' of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, at the times specified in Sub-part 1–2, ''Life Limits,'' and Sub-part 1–3, ''Demonstrated Fatigue Lives,'' of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, except as provided by paragraph (h) of this AD. Doing the actions required by paragraph (m) of this AD terminates the requirements of this paragraph.

**(h) Retained Grace Period for New or More Restrictive Actions**

This paragraph restates certain provisions of paragraph (i) of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011). For Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes: For any new or more restrictive life limit introduced with Sub-part 1–2, ''Life Limits,'' and Sub-part 1–3, ''Demonstrated Fatigue Lives,'' of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, replace the part at the time specified in Sub-part 1–2, ''Life Limits,'' and Sub-part 1–3, ''Demonstrated Fatigue Lives,'' of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006, or within 6 months after November 7, 2007 (the effective date of AD 2007–20–05, Amendment 39–15215 (72 FR 56262, October 3, 2007)), whichever is later.

**(i) Retained Revision of ALS To Incorporate Damage-Tolerant ALIs With Revised Compliance Times**

This paragraph restates the requirements of paragraph (j) of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), with revised compliance times. Within 9 months after August 22, 2011 (the effective date of AD 2011–14–06): Revise the maintenance program by incorporating all maintenance requirements and associated airworthiness limitations specified in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. Comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010; except as provided by paragraph (j) of this AD. Doing the actions required by paragraph (m) of this AD terminates the requirements of this paragraph.

**(j) Retained Special Compliance Times for Certain Tasks**

This paragraph restates the requirements of paragraph (k) of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), with changes to table 1 to paragraph (j) of this AD. For new and more restrictive tasks introduced with Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010; as specified in table 1 to paragraph (j) of this AD: The initial compliance time for doing the tasks is specified in table 1 to paragraph (j) of this AD.

TABLE 1 TO PARAGRAPH (j) OF THIS AD—*Compliance Times for Tasks*

| Task | Applicability (as specified in the applicability column of the task) | Compliance time, whichever occurs later | |
|---|---|---|---|
| 545102–01–6 | Group 19–1A CFM, Group 19–1B CFM, and Model A320–200 airplanes with CFM Industrial (CFM)/International Aero Engine (IAE) engines. | The threshold as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. | Within 2,000 flight cycles or 5,500 flight hours, after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), whichever occurs first. |
| 545102–01–7 | Model A320–100 series airplanes. | The threshold as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. | Within 2,000 flight cycles or 2,000 flight hours, after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), whichever occurs first. |
| 572050–01–1 or alternative task 572050–02–1. | Group 19–1A and Group 19–1B airplanes. | At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. | Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)). |
| 572050–01–4 or alternative task 572050–02–4. | Model A320–200 series airplanes. | At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. | Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)). |

TABLE 1 TO PARAGRAPH (j) OF THIS AD—*Compliance Times for Tasks*—Continued

| Task | | | |
|---|---|---|---|
| 572050–01–5 or alternative task 572050–02–5. | Group 21–1A airplanes ..... | At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. | Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)). |
| 572050–01–7 or alternative task 572050–02–7. | Model A320–100 series airplanes. | At the time of the next due accomplishment of any one of the tasks 572004, 572020, or 572053 as currently described in the Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. | Within 6 months after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)). |
| 534132–01–1 ..... | Model A320 PRE 30748 airplanes. | The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. | Within 100 days after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), without exceeding the previous threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. |
| 531118–01–1 ..... | Model A318 (except (A318–121 and –122), Group 19–1A, Group 19–1B, and Model A320 and A321 series airplanes. | The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. | Within 100 days after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)), without exceeding the previous threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005; Issue 08, dated March 2006; or Issue 09, dated November 2006. |
| 531118–01–1 ..... | Model A318–121 and –122 airplanes. | The threshold/interval as defined in Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Issue 11, dated September 2010. | Within 100 days after August 22, 2011 (the effective date of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011)). |

**Note 1 to table 1 to paragraph (j) of this AD:** ALI Task 572050 refers to the outer wing dry bay and is comprised of extracts from three ALI Tasks 572004, 572020, and 572053. The threshold of ALI Task 572050 for the whole dry bay area is that of the lowest threshold of the source ALI tasks, i.e., that of ALI Task 572053.

**(k) Retained Limitation: No Alternative Life Limits, Inspections, or Inspection Intervals After Accomplishment of the Actions Specified in Paragraph (g) of This AD**

This paragraph restates the requirements of paragraph (l) of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011). After the actions specified in paragraph (g) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used, except as provided by paragraph (h) of this AD, and except as required by paragraph (m) of this AD.

**(l) Retained Limitation: No Alternative Life Limits, Inspections, or Inspection Intervals After Accomplishment of the Actions Specified in Paragraph (j) of This AD**

This paragraph restates the requirements of paragraph (m) of AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011). After the actions specified in paragraph (i) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used, except as required by paragraph (m) of this AD.

**(m) New Maintenance Program Revision**

Within 30 days after the effective date of this AD, revise the maintenance program to incorporate Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011; and Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008. The initial compliance time for the accomplishing the actions is at the applicable time specified in Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011, and Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems

Maintenance, dated January 8, 2008; or within 4 months after the effective date of this AD; whichever occurs later.

**(n) New Limitation: No Alternative Actions or Intervals**

After accomplishing the revision required by paragraph (m) of this AD, no alternative actions (e.g., inspections) or intervals, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (o) of this AD.

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2011–14–06, Amendment 39–16741 (76 FR 42024, July 18, 2011), are approved as AMOCs for the corresponding actions specified in this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(p) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0008, dated January 16, 2012, and the service information specified in paragraphs (p)(1)(i) through (p)(1)(viii) of this AD, for related information.

(i) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011.

(ii) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006.

(iii) Airbus A318/A319/A320/A321 ALS Part 4—Ageing Systems Maintenance, dated January 8, 2008.

(iv) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005.

(v) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 08, dated March 2006.

(vi) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 09, dated November 2006.

(vii) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009.

(viii) Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 11, dated September 2010.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; the Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD), for all The Boeing Company Model 727 airplanes, which proposed to supersede an existing AD. That NPRM proposed to retain repetitive inspections of the in-tank fuel boost pump wiring, installation of sleeving over the in-tank fuel boost pump wires, repetitive inspections of a certain electrical wire, sleeve, and conduit, and applicable investigative and corrective actions; and repetitive engine fuel suction feed operational tests. That NPRM proposed to also require replacement of the wire bundles for the wing and center fuel boost pumps, installation of convoluted liners, and related investigative and corrective actions if necessary. That NPRM also proposed to require replacement of the fuel quantity indicating system (FQIS) wires; a low-frequency eddy current inspection for cracking; and repair if necessary. That NPRM also proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section. That NPRM was prompted by a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection. This action revises that NPRM by revising certain compliance times, specifying a terminating action, and adding a proposed requirement to incorporate another change to the airworthiness limitations section. We are proposing this supplemental NPRM to prevent chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

**DATES:** We must receive comments on this supplemental NPRM by September 27, 2013.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category. That NPRM published in the **Federal Register** on October 11, 2012 (77 FR 61731). That NPRM proposed to retain repetitive inspections of the in-tank fuel boost pump wiring to detect chafing of the wire insulation, evidence of electrical arcing, or arc-through of the conduit wall, and applicable corrective action; and installation of sleeving over the in-tank fuel boost pump wires. That NPRM also proposed to retain repetitive inspections for damage of a certain electrical wire and sleeve, and arcing damage of the conduit and signs of fuel leakage into the conduit; applicable investigative and corrective actions; and repetitive engine fuel suction feed operational tests. That NPRM proposed to require replacement of the wire bundles for the wing and center fuel boost pumps with new, improved wire bundles, installation of convoluted liners, and related investigative and corrective actions if necessary. That NPRM also proposed to require replacement of the FQIS wires with new, improved wires; a low-frequency eddy current inspection for cracking; and repair if necessary. That NPRM also proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section.

**Actions Since Previous NPRM (77 FR 61731, October 11, 2012) Was Issued**

Since we issued the previous NPRM (77 FR 61731, October 11, 2012), we have determined that additional limitations are necessary and that the initial compliance time for one task must be reduced. The preamble to AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007) explains that we consider the requirements ''interim action'' and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

**Comments**

We gave the public the opportunity to comment on the NPRM (77 FR 61731, October 11, 2012). The following presents the comments received on the NPRM and the FAA's response to each comment.

**Request To Add Airworthiness Limitations**

Boeing requested that we add ALI Task 28–AWL–18, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination,'' and Critical Design Configuration Control Limitation (CDCCL) Task 28–AWL–19, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination'' to the original NPRM (77 FR 61731, October 11, 2012).

We agree with the request. We have added new paragraph (n)(1) in this supplemental NPRM to require revising the maintenance program to include both tasks. These AWL's are necessary after accomplishing the actions specified in Boeing Alert Service Bulletin 727–28A013, dated August 18, 2010, which is proposed in paragraph (m) of this supplemental NPRM.

**Request for Correction**

Boeing requested that we correct the Relevant Service Information section and paragraph (n) of the NPRM (77 FR 61731, October 11, 2012) to refer to Section B rather than Section 9 of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. Boeing stated that there is no section 9 in that document.

We agree with the request. Although the Relevant Service Information is not repeated in this supplemental NPRM, we have made the correction to new paragraph (n)(2) of this supplemental NPRM (which was paragraph (n) of the previous NPRM (77 FR 61731, October 11, 2012)).

**Change to Compliance Time**

Paragraph (n) of the previous NPRM (77 FR 61731, October 11, 2012) specified a compliance time of 60 months after the effective date of the AD for accomplishing the initial task for Airworthiness Limitation Instruction (ALI) Task 28–AWL–20, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank;'' and CDCCL Task 28–AWL–21, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank,'' of Section B of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. We have added paragraph (n)(2) to this supplemental NPRM to change the compliance time for accomplishing the initial task to within 72 months after accomplishing the actions specified in Boeing Service Bulletin 727–28A0133, dated October 5, 2011.

**FAA's Determination**

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the previous NPRM (77 FR 61731, October 11, 2012). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

**Proposed Requirements of the Supplemental NPRM**

This supplemental NPRM would require accomplishing the actions

specified in the service information described previously, except as discussed under ''Differences Between the Supplemental NPRM and the Service Information.''

**Differences Between the Supplemental NPRM and the Service Information**

Although Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011, specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

**Costs of Compliance**

We estimate that this proposed AD affects 569 airplanes of U.S. registry.We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Number of U.S. airplanes | Cost on U.S. operators |
|---|---|---|---|---|---|
| Inspection, test, and corrective actions [retained actions from existing AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007)]. | 10 work-hours × $85 per hour = $850. | $0 | $850 | 260 | $221,000. |
| Replacement [proposed action]. | 185 work-hours × $85 per hour = $15,725. | $28,771 | $44,496 | 569 | $25,318,224. |
| Revise Maintenance Program [proposed action]. | 1 work-hour × $85 per hour = $85. | $0 | $85 | 569 | $48,365. |
| Concurrent FQIS wire replacement [proposed action]. | Up to 248 work-hours × $85 per hour = $21,080. | Up to $34,865 | Up to $55,945 | 569 | Up to $31,832,705. |
| Concurrent low frequency eddy current (LFEC) inspection [proposed action]. | 2 work-hours × $85 per hour = $170. | $0 | $170 | 569 | $96,730. |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2012–1069; Directorate Identifier 2012–NM–044–AD.

**(a) Comments Due Date**

We must receive comments by September 27, 2013.

**(b) Affected ADs**

This AD supersedes AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

**(c) Applicability**

(1) This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (p) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28, Fuel.

**(e) Unsafe Condition**

This AD was prompted by a report of damage found to the sleeve, jacket, and insulation on an electrical wire during a repetitive inspection. We are issuing this AD to prevent chafing of the fuel boost pump electrical wiring and leakage of fuel into the conduit, and to prevent electrical arcing between the wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

**(f) Compliance**

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

**(g) Retained Compliance Times**

This paragraph restates the requirements of paragraphs (f), (g), and (h) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(1) For airplanes with 50,000 or more total flight hours as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 20 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(2) For airplanes with less than 50,000 total flight hours, but more than 30,000 total flight hours, as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 30 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

(3) For airplanes with 30,000 total flight hours or less as of June 28, 1999 (the effective date of AD 99–12–52, Amendment 39–11199 (64 FR 33394, June 23, 1999)): Within 90 days after June 28, 1999, accomplish the requirements of paragraph (h) of this AD.

**(h) Retained Detailed Inspection, Corrective Action, and Installation**

This paragraph restates the requirements of paragraph (i) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007).

(1) Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and, except as provided by paragraph (i) of this AD, install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

(2) For the purposes of this AD, a detailed inspection is: An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

**(i) Retained Installation: Possible Deferral**

This paragraph restates the optional actions of paragraph (j) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Installation of sleeving over the wire bundles, as required by paragraph (h) of this AD, may be deferred if, within 18 months or 6,000 flight hours, whichever occurs first, after accomplishment of the inspection and applicable corrective actions required by paragraph (h) of this AD, the following actions are accomplished: Perform a detailed inspection of the in-tank fuel boost pump wire bundles, and applicable corrective actions; and install sleeving over the wire bundles; in accordance with Boeing Alert Service Bulletin 727–28A0126, dated May 24, 1999; Boeing Service Bulletin 727–28A0126, Revision 1, dated May 18, 2000; or Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007.

**(j) Retained Repetitive Inspections and Corrective Actions**

This paragraph restates the requirements of paragraph (k) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). Repeat the detailed inspection and applicable corrective actions required by paragraphs (h) and (i) of this AD, as applicable, at intervals not to exceed 30,000 flight hours, until the initial inspection, applicable corrective actions, and engine fuel suction feed operational test required by paragraph (k) of this AD have been done.

**(k) Retained Inspection, Test, and Related Investigative and Corrective Actions**

This paragraph restates the requirements of paragraph (l) of AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007). For all airplanes: Within 120 days after June 6, 2007 (the effective date of AD 2007–11–08), or 5,000 flight hours after the last inspection or corrective action done before June 6, 2007, as required by paragraph (h), (i), or (j), as applicable, of this AD, whichever occurs later, do a detailed inspection for damage of the sleeve and electrical wire of the fuel boost pump, and do an engine fuel suction feed operational test; and, before further flight, do related investigative and corrective actions, as applicable; by doing all applicable actions in and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0132, dated February 22, 2007. Repeat the detailed inspection and engine fuel suction feed operational test thereafter at intervals not to exceed 15,000 flight cycles. Accomplishment of the initial inspection, applicable corrective actions, and engine fuel suction feed operational test of this paragraph terminates the requirements of paragraphs (h), (i), and (j) of this AD.

**(l) New Installation**

Within 60 months after the effective date of this AD: Install new shielded wire bundles in convoluted liners in the wing and center fuel tank conduits and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0133, dated October 5, 2011. Related investigative and corrective actions must be done before further flight. Doing the actions specified in paragraphs (l) and (m) of this AD terminates the requirements of paragraphs (g), (h), (i), (j), and (k) of this AD.

**(m) New Concurrent Requirement**

Before or concurrently with accomplishing the requirements of paragraph (l) of this AD, replace the fuel quantity indicating system (FQIS) wire bundles and do a low frequency eddy current inspection for cracking, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727–28–0131, dated August 18, 2010. If any cracking is found during the inspection, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

**(n) New Maintenance Program Revision**

(1) Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate Airworthiness Limitation Instruction (ALI) Task 28–AWL–18, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination''; and CDCCL Task 28–AWL–19, ''Fuel Quantity Indicating System (FQIS)—Out-Tank Wiring Lightning Shield to Ground Termination,'' of Section B of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. The initial compliance time for the inspections is within 120 months after accomplishing the actions required by paragraph (m) of this AD.

(2) Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate Airworthiness Limitation Instruction (ALI) Task 28–AWL–20, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank''; and CDCCL Task 28–AWL–21, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank,'' of Section B of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, Revision August 2010. The initial compliance time for the inspections is within 72 months after accomplishing the actions required by paragraph (l) of this AD.

**(o) No Alternative Actions, Intervals, and/or CDCCLs**

After accomplishing the revisions required by paragraphs (n)(1) and (n)(2) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (p) of this AD.

**(p) Alternative Methods of Compliance (AMOCs)**

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

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

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

(4) AMOCs approved previously in accordance with AD 2007–11–08, Amendment 39–15065 (72 FR 28594, May 22, 2007), are approved as AMOCs for the corresponding provisions of this AD.

**(q) Related Information**

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

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

Issued in Renton, Washington, on August 2, 2013.

**Ross Landes,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19527 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0724; Directorate Identifier 99–CE–013–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Piper Aircraft, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise airworthiness directive (AD) 99–26–19 that applies to certain The New Piper Aircraft, Inc. Model J–2 airplanes equipped with wing lift struts. AD 99–26–19 currently requires repetitively inspecting the wing lift struts for dents and corrosion; repetitively inspecting the wing lift strut forks for cracks; replacing any dented or corroded wing lift strut; replacing any cracked wing lift strut fork; and repetitively replacing the wing lift strut forks at specified times for certain airplanes. AD 99–26–19 also currently requires incorporating a ''NO STEP'' placard on the wing lift strut. Since we issued AD 99–26–19, we have been informed that paragraph (c) is being misinterpreted and causing confusion. This proposed AD would clarify the intent of the language currently in paragraph (c) of AD 99–26–19 and would retain all other requirements of AD 99–26–19. We are proposing this AD to correct the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

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

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

For service information identified in this proposed AD, contact Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com.* Information about the Jensen Aircraft STCs may be obtained from F. Atlee Dodge, Aircraft Services, LLC, 6672 Wes Way, Anchorage, Alaska 99518–0409, Internet: *www.fadodge.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0724; Directorate Identifier 99–CE–013–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On December 16, 1999, we issued AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999), (''AD 99–26–19''), for certain The New Piper Aircraft, Inc. (currently Piper Aircraft, Inc.) J–2 series airplanes equipped with wing lift struts. We issued AD 99–26–19 because J–2 series airplanes were inadvertently omitted from the applicability of AD 99–01–05, Amendment 39–10972 (63 FR 72132, December 31, 1998, (''99–01–05'').

AD 99–01–05 was issued to supersede AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993), which previously included J–2 series airplanes in the Applicability section, in order to include a terminating action for repetitively inspecting and replacing the wing lift struts and the wing lift strut forks.

We issued both ADs to detect and correct corrosion and cracking on the front and rear wing lift struts and forks, which could cause the wing lift strut to fail. This failure could result in the wing separating from the airplane.

**Actions Since AD 99–26–19 Was Issued**

Since we issued AD 99–26–19, we have been informed that the language in paragraph (c) is being misinterpreted and causing confusion. Paragraph (c) of AD 99–26–19 currently states, ''If holes are drilled in wing lift strut assemblies installed in accordance with (a)(4) or (b)(3) of this AD to attach cuffs, door clips, or other hardware, inspect the wing lift struts at intervals not to exceed 24 calendar months using the procedures specified in either paragraphs (a)(1) or (a)(2), including all subparagraphs, of this AD.''

Our intention was to specify that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal is never improperly broken. We also intended to specify that if the seal is improperly broken then that wing lift strut becomes subject to continued repetitive inspections.

We did not intend to promote drilling holes into or otherwise unsealing a sealed strut. Properly unsealing and resealing a sealed wing lift strut is still considered a terminating action for the repetitive inspection requirements of this proposed AD as long as all appropriate regulations and issues are considered, such as static strength, fatigue, material effects, immediate and long-term (internal and external) corrosion protection, resealing methods, etc. Current FAA regulations in 14 CFR 43.13(b) specify that maintenance performed will result in the part's condition to be at least equal to its original or properly altered condition. There are provisions in this proposed AD for approving such actions as an alternative method of compliance (AMOC).

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 99–26–19. This proposed AD would also clarify our intent of required actions if the seal on a sealed wing lift strut is ever improperly broken.

**Paragraph Designation Changes to AD**

Since AD 99–26–19 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

TABLE 1—REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 99–26–19 | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) | paragraph (h) |
| paragraph (a)(1) | paragraph (i)(1) |
| paragraph (a)(1)(i) | paragraph (i)(1)(i) |
| paragraph (a)(1)(ii) | paragraph (i)(1)(ii) |
| paragraph (a)(2) | paragraph (i)(2) |
| paragraph (a)(2)(i) | paragraph (i)(2)(i) |
| paragraph (a)(2)(ii) | paragraph (i)(2)(ii) |
| paragraph (a)(3) | paragraph (j)(1) |
| paragraph (a)(4) | paragraph (j)(2) |
| paragraph (b) | paragraph (k) |
| paragraph (b)(1), (b)(1)(i) & (b)(1)(ii) | paragraph (l) |
| paragraph (b)(1)(ii)(A) | paragraph (l)(1) |
| paragraph (b)(1)(ii)(B) & (b)(1)(iv) | paragraph (l)(2) |
| paragraph (b)(1)(ii)(C) & (b)(1)(iv) | paragraph (l)(3) |
| paragraph (b)(1)(iii) & (b)(2) | paragraph (m)(1) |
| paragraph (b)(3), (b)(3)(i) & (b)(3)(ii) | paragraph (m)(2) |
| Paragraph (c) | Removed |
| paragraph (d) | paragraph (n)(1) |
| paragraph (d)(1) | paragraph (n)(1)(i) |
| paragraph (d)(2) | paragraph (n)(1)(ii) |
| N/A | Paragraph (n)(2) |

**Costs of Compliance**

We estimate that this proposed AD affects 91 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD. However, the only difference in the costs presented below and the costs associated with AD 99–26–19, is the change in the labor rate from $65 per hour to $85 per hour:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection of the wing lift struts and wing lift strut forks. | 8 work-hours × $85 per hour = $680 per inspection cycle. | Not applicable | $680 per inspection cycle. | $61,880 per inspection cycle. |
| Installation placard | 1 work-hour × $85 = $85 | $30 | $115 | $10,465. |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

| Action | Labor cost per wing lift strut | Parts cost per wing lift strut | Cost per product per wing lift strut |
|---|---|---|---|
| Replacement of the wing lift strut and/or wing lift strut forks. | 4 work-hours × $85 per hour = $340 | $440 | $780 |

**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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999), and adding the following new AD:

**Piper Aircraft, Inc.:** Docket No. FAA–2013–0724; Directorate Identifier 99–CE–013–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 27, 2013.

**(b) Affected ADs**

This AD revises AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999). AD 99–01–05, Amendment 39–10972 (63 FR 72132, December 31, 1998), which superseded AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993), also relates to the subject of this AD.

**(c) Applicability**

This AD applies to Piper Aircraft, Inc. Model J–2 airplanes, serial numbers 500 through 1975, that are:

(1) equipped with wing lift struts; and

(2) certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

The subject of this AD was originally prompted by reports of corrosion damage found on the wing lift struts. We are revising AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999), because of reports that paragraph (c) in the existing AD is being misinterpreted and is causing confusion. This AD clarifies the intent of the language currently in paragraph (c) of AD 99–26–19, which is being removed by this AD. Our intention was to specify that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal never improperly broken. This AD retains all the actions currently required in AD 99–26–19. There are no new requirements in this AD and it does not add any additional burden to the owners/operators of the affected airplanes. We are issuing this AD to detect and correct corrosion and cracking on the front and rear wing lift struts and forks, which could cause the wing lift strut to fail. This failure could result in the wing separating from the airplane.

**(f) Paragraph Designation Changes to AD 99–26–19**

Since AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999), was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

TABLE 1 TO PARAGRAPH (f) OF THIS AD—REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 99–26–19 | Corresponding requirement in this AD |
|---|---|
| paragraph (a) | paragraph (h) |
| paragraph (a)(1) | paragraph (i)(1) |
| paragraph (a)(1)(i) | paragraph (i)(1)(i) |
| paragraph (a)(1)(ii) | paragraph (i)(1)(ii) |
| paragraph (a)(2) | paragraph (i)(2) |
| paragraph (a)(2)(i) | paragraph (i)(2)(i) |
| paragraph (a)(2)(ii) | paragraph (i)(2)(ii) |
| paragraph (a)(3) | paragraph (j)(1) |
| paragraph (a)(4) | paragraph (j)(2) |
| paragraph (b) | paragraph (k) |

TABLE 1 TO PARAGRAPH (f) OF THIS AD—REVISED PARAGRAPH IDENTIFIERS—Continued

| Requirement in AD 99–26–19 | Corresponding requirement in this AD |
|---|---|
| paragraph (b)(1) through (b)(1)(ii) | paragraph (l) |
| paragraph (b)(1)(ii)(A) | paragraph (l)(1) |
| paragraph (b)(1)(ii)(B) and (b)(1)(iv) | paragraph (l)(2) |
| paragraph (b)(1)(ii)(C) and (b)(1)(iv) | paragraph (l)(3) |
| paragraph (b)(1)(iii) and (b)(2) | paragraph (m)(1) |
| paragraph (b)(3) through (b)(3)(ii) | paragraph (m)(2) |
| Paragraph (c) | Removed |
| paragraph (d) | paragraph (n)(1) |
| paragraph (d)(1) | paragraph (n)(1)(i) |
| paragraph (d)(2) | paragraph (n)(1)(ii) |
| N/A | Paragraph (n)(2) |

**(g) Compliance**

Unless already done (compliance with AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999)), do the following actions within the compliance times specified in paragraphs (h) through (n) of this AD, including all subparagraphs.

**Note 1 to paragraph (g) of this AD:** This AD does not require any actions over that already required by AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999). This AD clarifies the FAA's intention that if a sealed wing lift strut assembly is installed as a replacement part, the repetitive inspection requirement is terminated only if the seal is never improperly broken. If the seal is improperly broken, then that wing lift strut becomes subject to continued repetitive inspections. We did not intend to promote drilling holes into or otherwise unsealing a sealed strut. Properly unsealing and resealing a sealed wing lift strut is still considered a terminating action for the repetitive inspection requirements of this AD as long as all appropriate regulations and issues are considered, such as static strength, fatigue, material effects, immediate and long-term (internal and external) corrosion protection, resealing methods, etc.

**(h) Remove Wing Lift Struts**

At whichever of paragraphs (h)(1) or (h)(2) of this AD that occurs later, remove the wing lift struts following Piper Aircraft Corporation Mandatory Service Bulletin (Piper MSB) No. 528D, dated October 19, 1990. Before further flight after the removal, do one of the actions in either paragraph (i)(1), (i)(2), (j)(1), or (j)(2) of this AD, including all subparagraphs.

(1) Within 1 calendar month after February 14, 2000 (the effective date retained from AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999)); or

(2) Within 24 calendar months after the last inspection done in accordance with AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993).

**(i) Inspect Wing Lift Struts**

(1) Before further flight after the removal required in paragraph (h) of this AD, inspect each wing lift strut for corrosion and perceptible dents following Piper MSB No. 528D, dated October 19, 1990.

(i) *If no corrosion is visible and no perceptible dents are found on any wing lift strut during the inspection required in paragraph (i)(1) of this AD,* before further flight, apply corrosion inhibitor to each wing lift strut following Piper MSB No. 528D, dated October 19, 1990. Repetitively thereafter inspect each wing lift strut at intervals not to exceed 24 calendar months following the procedures in paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs.

(ii) *If corrosion or perceptible dents are found on any wing lift strut during the inspection required in paragraph (i)(1) of this AD or during any repetitive inspection required in paragraph (i)(1)(i) of this AD,* before further flight, replace the affected wing lift strut with one of the replacement options specified in paragraph (j)(1) or (j)(2) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

(2) Before further flight after the removal required in paragraph (h) of this AD, inspect each wing lift strut for corrosion following the procedures in the Appendix to this AD. This inspection must be done by a Level 2 or Level 3 inspector certified using the guidelines established by the American Society for Non-destructive Testing or the ''Military Standard for Nondestructive Testing Personnel Qualification and Certification'' (MIL–STD–410E).

(i) *If no corrosion is found on any wing lift strut during the inspection required in paragraph (i)(2) of this AD and all requirements in the Appendix to this AD are met,* before further flight, apply corrosion inhibitor to each wing lift strut following Piper MSB No. 528D, dated October 19, 1990. Repetitively thereafter inspect each wing lift strut at intervals not to exceed 24 calendar months following the procedures in paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs.

(ii) *If corrosion is found on any wing lift strut during the inspection required paragraph (i)(2) of this AD or during any repetitive inspection required in paragraph (i)(2)(i) of this AD, or if any requirement in the Appendix of this AD is not met,* before further flight after any inspection in which corrosion is found or the Appendix requirements are not met, replace the affected wing lift strut with one of the replacement options specified in paragraph (j)(1) or (j)(2) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

**(j) Wing Lift Strut Replacement Options**

(1) Install original equipment manufacturer (OEM) part number wing lift struts (or FAA-approved equivalent part numbers) that have been inspected following the procedures in either paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs, and are found to be airworthy. Do the installations following Piper MSB No. 528D, dated October 19, 1990. Repetitively thereafter inspect the newly installed wing lift struts at intervals not to exceed 24 calendar months following the procedures in either paragraph (i)(1) or (i)(2) of this AD, including all subparagraphs.

(2) Install new sealed wing lift strut assemblies (or FAA-approved equivalent part numbers) (these sealed wing lift strut assemblies also include the wing lift strut forks) following Piper MSB No. 528D, dated October 19, 1990. Installing one of these new sealed wing lift strut assemblies terminates the repetitive inspection requirements in paragraphs (i)(1) and (i)(2) of this AD, and the wing lift strut fork removal, inspection, and replacement requirements in paragraphs (k) and (l) of this AD, including all subparagraphs, for that wing lift strut assembly.

**(k) Remove Wing Lift Strut Forks**

Within the next 100 hours time-in-service (TIS) after February 14, 2000 (the effective date retained from AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999)) or within 500 hours TIS after the last inspection done in accordance with AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993), whichever occurs later, remove the wing lift strut forks (unless already replaced in accordance with paragraph (j)(2) of this AD). Do the removal following Piper MSB No. 528D, dated October 19, 1990. Before further flight after the removal, do one of the actions in either paragraph (l) or (m) of this AD, including all subparagraphs.

**(l) Inspect and Replace Wing Lift Strut Forks**

Before further flight after the removal required in paragraph (k) of this AD, inspect the wing lift strut forks for cracks using magnetic particle procedures, such as those contained in FAA Advisory Circular (AC) 43.13–1B, Chapter 5, which can be found in the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/99c827db9baac81b86256b4500596c4e/*

*$FILE/Chapter%2005.pdf.* Repetitively thereafter inspect at intervals not to exceed 500 hours TIS until the replacement time requirement specified in paragraph (l)(2) or (l)(3) of this AD is reached provided no cracks are found.

(1) *If cracks are found during any inspection required in paragraph (l) of this AD or during any repetitive inspection required in paragraph (l)(2) or (l)(3) of this AD,* before further flight, replace the affected wing lift strut fork with one of the replacement options specified in paragraph (m)(1) or (m)(2) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable.

(2) *If no cracks are found during the initial inspection required in paragraph (l) of this AD and the airplane is currently equipped with floats or has been equipped with floats at any time during the previous 2,000 hours TIS since the wing lift strut forks were installed,* at or before accumulating 1,000 hours TIS on the wing lift strut forks, replace the wing lift strut forks with one of the replacement options specified in paragraph (m)(1) or (m)(2) of this AD. Do the replacement following the procedures specified in those paragraphs, as applicable. Repetitively thereafter inspect the newly installed wing lift strut forks at intervals not to exceed 500 hours TIS following the procedures specified in paragraph (l) of this AD, including all subparagraphs.

(3) *If no cracks are found during the initial inspection required in paragraph (l) of this AD and the airplane has never been equipped with floats during the previous 2,000 hours TIS since the wing lift strut forks were installed,* at or before accumulating 2,000 hours TIS on the wing lift strut forks, replace the wing lift strut forks with one of the replacement options specified in paragraph (m)(1) or (m)(2). Do the replacement following the procedures specified in those paragraphs, as applicable. Repetitively thereafter inspect the newly installed wing lift strut forks at intervals not to exceed 500 hours TIS following the procedures specified in paragraph (l) of this AD, including all subparagraphs.

**(m) Wing Lift Strut Fork Replacement Options**

(1) Install new OEM part number wing lift strut forks of the same part numbers of the existing part (or FAA-approved equivalent part numbers) that were manufactured with rolled threads. Wing lift strut forks manufactured with machine (cut) threads are not to be used. Do the installations following Piper MSB No. 528D, dated October 19, 1990. Repetitively thereafter inspect and replace the newly installed wing lift strut forks at intervals not to exceed 500 hours TIS following the procedures specified in paragraph (l) of this AD, including all subparagraphs.

(2) Install new sealed wing lift strut assemblies (or FAA-approved equivalent part numbers) (these sealed wing lift strut assemblies also include the wing lift strut forks) following Piper MSB No. 528D, dated October 19, 1990. This installation may have already been done through the option specified in paragraph (j)(2) of this AD. Installing one of these new sealed wing lift strut assemblies terminates the repetitive inspection requirements in paragraphs (i)(1) and (i)(2) of this AD, and the wing lift strut fork removal, inspection, and replacement requirements in paragraphs (k) and (l) of this AD, including all subparagraphs, for that wing lift strut assembly.

**(n) Install Placard**

(1) Within 1 calendar month after February 14, 2000 (the effective date retained from AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999), or within 24 calendar months after the last inspection required by AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993), and before further flight after any replacement of a wing lift strut assembly required by this AD, do one of the following:

(i) Install ''NO STEP'' decal, Piper (P/N) 80944–02, on each wing lift strut approximately 6 inches from the bottom of the wing lift strut in a way that the letters can be read when entering and exiting the airplane; or

(ii) Paint the words ''NO STEP'' approximately 6 inches from the bottom of the wing lift struts in a way that the letters can be read when entering and exiting the airplane. Use a minimum of 1-inch letters using a color that contrasts with the color of the airplane.

(2) The ''NO STEP'' markings required by paragraph (n)(1)(i) and (n)(1)(ii) of this AD must remain in place for the life of the airplane.

**(o) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Atlanta Aircraft Certification Office, (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(3) AMOCs approved for AD 93–10–06, Amendment 39–8586 (58 FR 29965, May 25, 1993) and AD 99–26–19, Amendment 39–11479 (64 FR 72524, December 28, 1999) are approved as AMOCs for this AD.

**(p) Related Information**

(1) For more information about this AD, contact Gregory K. Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

## Appendix to Docket No. FAA–2013–0724

**Procedures and Requirements for Ultrasonic Inspection of Piper Wing Lift Struts**

*Equipment Requirements*

1. A portable ultrasonic thickness gauge or flaw detector with echo-to-echo digital thickness readout capable of reading to 0.001-inch and an A-trace waveform display will be needed to do this inspection.

2. An ultrasonic probe with the following specifications will be needed to do this inspection: 10 MHz (or higher), 0.283-inch (or smaller) diameter dual element or delay line transducer designed for thickness gauging. The transducer and ultrasonic system shall be capable of accurately measuring the thickness of AISI 4340 steel down to 0.020-inch. An accuracy of +/− 0.002-inch throughout a 0.020-inch to 0.050-inch thickness range while calibrating shall be the criteria for acceptance.

3. Either a precision machined step wedge made of 4340 steel (or similar steel with equivalent sound velocity) or at least three shim samples of same material will be needed to do this inspection. One thickness of the step wedge or shim shall be less than or equal to 0.020-inch, one shall be greater than or equal to 0.050-inch, and at least one other step or shim shall be between these two values.

4. Glycerin, light oil, or similar non-water based ultrasonic couplants are recommended in the setup and inspection procedures. Water-based couplants, containing appropriate corrosion inhibitors, may be utilized, provided they are removed from both the reference standards and the test item after the inspection procedure is completed and adequate corrosion prevention steps are then taken to protect these items.

• **Note:** Couplant is defined as ''a substance used between the face of the transducer and test surface to improve transmission of ultrasonic energy across the transducer/strut interface.''

• **Note:** If surface roughness due to paint loss or corrosion is present, the surface should be sanded or polished smooth before testing to assure a consistent and smooth surface for making contact with the transducer. Care shall be taken to remove a minimal amount of structural material. Paint repairs may be necessary after the inspection to prevent further corrosion damage from occurring. Removal of surface irregularities will enhance the accuracy of the inspection technique.

*Instrument Setup*

1. Set up the ultrasonic equipment for thickness measurements as specified in the instrument's user's manual. Because of the variety of equipment available to perform ultrasonic thickness measurements, some modification to this general setup procedure may be necessary. However, the tolerance requirement of step 13 and the record keeping requirement of step 14, must be satisfied.

2. If battery power will be employed, check to see that the battery has been properly charged. The testing will take approximately two hours. Screen brightness and contrast should be set to match environmental conditions.

3. Verify that the instrument is set for the type of transducer being used, i.e. single or dual element, and that the frequency setting is compatible with the transducer.

4. If a removable delay line is used, remove it and place a drop of couplant between the transducer face and the delay line to assure good transmission of ultrasonic energy. Reassemble the delay line transducer and continue.

5. Program a velocity of 0.231-inch/microsecond into the ultrasonic unit unless an alternative instrument calibration procedure is used to set the sound velocity.

6. Obtain a step wedge or steel shims per item 3 of the *Equipment Requirements.* Place the probe on the thickest sample using couplant. Rotate the transducer slightly back and forth to ''ring'' the transducer to the sample. Adjust the delay and range settings to arrive at an A-trace signal display with the first backwall echo from the steel near the left side of the screen and the second backwall echo near the right of the screen. Note that when a single element transducer is used, the initial pulse and the delay line/steel interface will be off of the screen to the left. Adjust the gain to place the amplitude of the first backwall signal at approximately 80% screen height on the A-trace.

7. ''Ring'' the transducer on the thinnest step or shim using couplant. Select positive half-wave rectified, negative half-wave rectified, or filtered signal display to obtain the cleanest signal. Adjust the pulse voltage, pulse width, and damping to obtain the best signal resolution. These settings can vary from one transducer to another and are also user dependent.

8. Enable the thickness gate, and adjust the gate so that it starts at the first backwall echo and ends at the second backwall echo. (Measuring between the first and second backwall echoes will produce a measurement of the steel thickness that is not affected by the paint layer on the strut). If instability of the gate trigger occurs, adjust the gain, gate level, and/or damping to stabilize the thickness reading.

9. Check the digital display reading and if it does not agree with the known thickness of the thinnest thickness, follow your instrument's calibration recommendations to produce the correct thickness reading. When a single element transducer is used this will usually involve adjusting the fine delay setting.

10. Place the transducer on the thickest step of shim using couplant. Adjust the thickness gate width so that the gate is triggered by the second backwall reflection of the thick section. If the digital display does not agree with the thickest thickness, follow your instruments calibration recommendations to produce the correct thickness reading. A slight adjustment in the velocity may be necessary to get both the thinnest and the thickest reading correct. Document the changed velocity value.

11. Place couplant on an area of the lift strut which is thought to be free of corrosion and ''ring'' the transducer to surface. Minor adjustments to the signal and gate settings may be required to account for coupling improvements resulting from the paint layer. The thickness gate level should be set just high enough so as not to be triggered by irrelevant signal noise. An area on the upper surface of the lift strut above the inspection area would be a good location to complete this step and should produce a thickness reading between 0.034-inch and 0.041-inch.

12. Repeat steps 8, 9, 10, and 11 until both thick and thin shim measurements are within tolerance and the lift strut measurement is reasonable and steady.

13. Verify that the thickness value shown in the digital display is within +/- 0.002-inch of the correct value for each of the three or more steps of the setup wedge or shims. Make no further adjustments to the instrument settings.

14. Record the ultrasonic versus actual thickness of all wedge steps or steel shims available as a record of setup.

*Inspection Procedure*

1. Clean the lower 18 inches of the wing lift struts using a cleaner that will remove all dirt and grease. Dirt and grease will adversely affect the accuracy of the inspection technique. Light sanding or polishing may also be required to reduce surface roughness as noted in the *Equipment Requirements* section.

2. Using a flexible ruler, draw a 1/4-inch grid on the surface of the first 11 inches from the lower end of the strut as shown in Piper Service Bulletin No. 528D. This can be done using a soft (#2) pencil and should be done on both faces of the strut. As an alternative to drawing a complete grid, make two rows of marks spaced every 1/4-inch across the width of the strut. One row of marks should be about 11 inches from the lower end of the strut, and the second row should be several inches away where the strut starts to narrow. Lay the flexible ruler between respective tick marks of the two rows and use tape or a rubber band to keep the ruler in place. See Figure 1.

3. Apply a generous amount of couplant inside each of the square areas or along the edge of the ruler. Re-application of couplant may be necessary.

4. Place the transducer inside the first square area of the drawn grid or at the first 1/4-inch mark on the ruler and ''ring'' the transducer to the strut. When using a dual element transducer, be very careful to record the thickness value with the axis of the transducer elements perpendicular to any curvature in the strut. If this is not done, loss of signal or inaccurate readings can result.

5. Take readings inside each square on the grid or at 1/4-inch increments along the ruler and record the results. When taking a thickness reading, rotate the transducer slightly back and forth and experiment with the angle of contact to produce the lowest thickness reading possible. Pay close attention to the A-scan display to assure that the thickness gate is triggering off of maximized backwall echoes.

• **Note:** A reading shall not exceed .041 inch. If a reading exceeds .041-inch, repeat steps 13 and 14 of the *Instrument Setup* section before proceeding further.

6. If the A-trace is unsteady or the thickness reading is clearly wrong, adjust the signal gain and/or gate setting to obtain reasonable and steady readings. If any instrument setting is adjusted, repeat steps 13 and 14 of the *Instrument Setup* section before proceeding further.

7. In areas where obstructions are present, take a data point as close to the correct area as possible.

• **Note:** The strut wall contains a fabrication bead at approximately 40% of the strut chord. The bead may interfere with accurate measurements in that specific location.

8. A measurement of 0.024-inch or less shall require replacement of the strut prior to further flight.

9. If at any time during testing an area is encountered where a valid thickness measurement cannot be obtained due to a loss of signal strength or quality, the area shall be considered suspect. These areas may have a remaining wall thickness of less than 0.020-inch, which is below the range of this setup, or they may have small areas of localized corrosion or pitting present. The latter case will result in a reduction in signal strength due to the sound being scattered from the rough surface and may result in a signal that includes echoes from the pits as well as the backwall. The suspect area(s) shall be tested with a Maule ''Fabric Tester'' as specified in Piper Service Bulletin No. 528D.

10. Record the lift strut inspection in the aircraft log book.

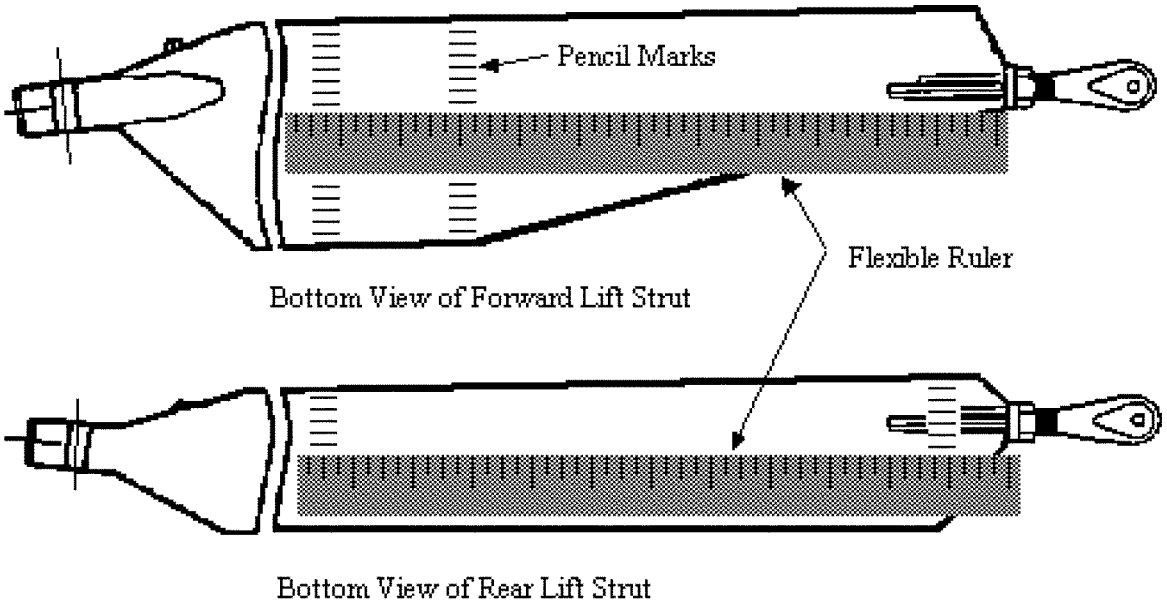


**Figure 1**

Issued in Kansas City, Missouri, on August 6, 2013.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19530 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0687; Directorate Identifier 2012–NM–118–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by reports of burr marks on the primary wheels, and cracked rings on the primary wheel shaft, on certain horizontal stabilizer trim actuators (HSTAs). This proposed AD would require replacing certain HSTAs. We are proposing this AD to prevent burr marks on the primary wheels, and cracked rings on the primary wheel shaft, on certain HSTAs, which may lead to a disconnect of the pitch trim surface and subsequent loss of pitch control, resulting in loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0687; Directorate Identifier 2012–NM–118–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–18, dated May 29, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was discovered that a number of primary wheels on the HSTA P/N [part number] 601R92305–5 (or vendor P/N 8396–4) had burr marks. Investigation revealed that the burr marks were a result of incorrectly using the manufacturing process. In addition, some rings that were fitted on the primary wheel shaft were found cracked. If not corrected, this condition may lead to a disconnect of the pitch trim surface and subsequent loss of pitch control.
>
> This [Canadian] AD mandates the removal of the affected units that have the above described manufacturing defect.

Corrective actions include replacement of certain HSTAs. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Bombardier has issued Service Bulletin 601R–27–159, dated June 15, 2011. The actions described in this service bulletin are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

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

**Differences Between This AD and the MCAI or Service Information**

While the Applicability of Transport Canada Civil Aviation (TCCA) Canadian AD CF–2012–18, dated May 29, 2012, is Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent, equipped with HSTAs having P/N 601R92305–5 or vendor P/N 8396–4, with serial numbers (S/N)s 287, 724, 813, 841, 998, 1031, 1035, 1049, 1053, 1067, 1068, 1136, 1252, 1268, 1303, 1319, 1338, 1354, 1374, 1378, 1445, 1470, 1498, 1513, 1546, 1632, 1736, 1766, 1846, 1849, 2002 through 2009, 2011, 2013 through 2016, 2019, 2020, and 2022; the applicability of this AD is for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This has been coordinated with TCCA.

While TCCA Canadian AD CF–2012–18, dated May 29, 2012, does not allow for a records review to verify part numbers, paragraph (g) of this AD does allow for a records review to be used to verify part numbers.

**Costs of Compliance**

We estimate that this proposed AD affects 575 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replacement | 19 work-hours × $85 per hour = $1,615 | $0 | $1,615 | $928,625 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory 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 AD:

**Bombardier, Inc.:** Docket No. FAA–2013–0687; Directorate Identifier 2012–NM–118–AD.

**(a) Comments Due Date**

We must receive comments by September 27, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight Controls.

**(e) Reason**

This AD was prompted by reports of burr marks on the primary wheels, and cracked rings on the primary wheel shaft, on certain HSTAs. We are issuing this AD to prevent burr marks on the primary wheels, and cracked rings on the primary wheel shaft, on certain HSTAs, which may lead to a disconnect of the pitch trim surface and subsequent loss of pitch control, resulting in loss of control of the airplane.

**(f) Compliance**

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

**(g) Inspection**

Within 1,000 flight hours or 4 months after the effective date of this AD, whichever occurs first, inspect to determine if any HSTA having part number (P/N) 601R92305–5 or vendor P/N 8396–4, with serial numbers (S/N)s 287, 724, 813, 841, 998, 1031, 1035, 1049, 1053, 1067, 1068, 1136, 1252, 1268, 1303, 1319, 1338, 1354, 1374, 1378, 1445, 1470, 1498, 1513, 1546, 1632, 1736, 1766, 1846, 1849, 2002 through 2009, 2011, 2013 through 2016, 2019, 2020, and 2022 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the HSTA can be conclusively determined from that review.

**(h) Replacement**

Within 1,000 flight hours or 4 months after the effective date of this AD, whichever occurs first, replace the affected HSTAs identified in paragraph (g) of this AD, with a serviceable HSTA, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–159, dated June 15, 2011.

**(i) Parts Installation Limitations**

As of the effective date of this AD, no person may install any HSTA having P/N 601R92305–5 or vendor P/N 8396–4 with a S/N listed in paragraph (g) of this AD, unless the S/N has the suffix ''A'' beside it.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information Canadian Airworthiness Directive CF–2012–18, dated May 29, 2012, for related information, which can be found in the AD docket on the internet at *http://www.regulations.gov.*

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 6, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19534 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0690; Directorate Identifier 2013–NM–088–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede airworthiness directive (AD) 2009–24–07, which applies to certain The Boeing Company Model 737–600, –700, –700C, and –800 series airplanes. AD 2009–24–07 currently requires repetitive lubrications of the right and left main landing gear (MLG) forward trunnion pins. AD 2009–24–07 also requires an inspection for discrepancies of the transition radius of the MLG forward trunnion pins, and corrective actions if necessary. For certain airplanes, AD 2009–24–07 requires repetitive detailed inspections for discrepancies (including finish damage, corrosion, pitting, and base metal scratches) of the transition radius of the left and right MLG trunnion pins, and corrective action if necessary. Replacing or overhauling the trunnion pins would terminate the actions required by AD 2009–24–07. This proposed AD would add airplanes to the applicability of AD 2009–24–07. We are proposing this AD to prevent stress corrosion cracking of the forward trunnion pins, which could result in fracture of the pins and consequent collapse of the MLG.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://*

*www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone 425–917–6440; fax 425–917–6590; email: *nancy.marsh@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0690; Directorate Identifier 2013–NM–088–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

## Discussion

On November 12, 2009, we issued AD 2009–24–07, Amendment 39–16095 (74 FR 62231, November 27, 2009), for certain Model 737–600, –700, –700C, and –800 series airplanes. AD 2009–24–07 requires repetitive lubrications of the right and left main landing gear (MLG) forward trunnion pins. AD 2009–24–07 also requires an inspection for discrepancies of the transition radius of the MLG forward trunnion pins, and corrective actions if necessary. For certain airplanes, AD 2009–24–07 also requires repetitive detailed inspections for discrepancies (including finish damage, corrosion, pitting, and base metal scratches) of the transition radius of the left and right MLG trunnion pins, and corrective action if necessary. Replacing or overhauling the trunnion pins would terminate the actions required by that AD. AD 2009–24–07 resulted from a report that the protective finishes on the forward trunnion pins for the left and right MLG might have been damaged during final assembly. We issued AD 2009–24–07 to prevent stress corrosion cracking of the forward trunnion pins, which could result in fracture of the pins and consequent collapse of the MLG.

## Actions Since AD 2009–24–07 Was Issued

Since we issued AD 2009–24–07, we have determined that airplanes outside the applicability of AD 2009–24–07, including Model 737–900 airplanes, are also subject to the identified unsafe condition. This determination is due to reports of corrosion protection damage to the forward trunnion pin on some of those airplanes.

## Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0690.

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2009–24–07, this proposed AD would retain all of the requirements of AD 2009–24–07. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraphs (g), (h), and (i) of this proposed AD. This proposed AD would also add airplanes to the applicability statement of AD 2009–24–07. This proposed AD would require accomplishing the actions specified in the service information described previously.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

## Costs of Compliance

We estimate that this proposed AD affects 431 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Repetitive lubrications ..... | 1 | $85 | $0 | $85 per lubrication ..... | 431 | $8,500 per lubrication. |
| Repetitive inspections ..... | 8 | 85 | 0 | $680 per inspection cycle | 431 | $68,000 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

## Authority for This Rulemaking

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–24–07, Amendment 39–16095 (74 FR 62231, November 27, 2009), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2013–0690; Directorate Identifier 2013–NM–088–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 27, 2013.

**(b) Affected ADs**

This AD supersedes AD 2009–24–07, Amendment 39–16095 (74 FR 62231, November 27, 2009).

**(c) Applicability**

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800 and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing gear.

**(e) Unsafe Condition**

This AD was prompted by a report that the protective finishes on the forward trunnion pins for the left and right MLG might have been damaged during final assembly. We are issuing this AD to prevent stress corrosion cracking of the forward trunnion pins, which could result in fracture of the pins and consequent collapse of the MLG.

**(f) Compliance**

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

**(g) Repetitive Lubrications**

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013, except as required by paragraph (j) of this AD: Lubricate the left and right MLG forward trunnion pins, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013. Repeat the lubrication thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' until all applicable requirements of paragraph (h) of this AD have been accomplished.

**(h) Inspection**

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013, except as required by paragraph (j) of this AD: Except as provided by paragraph (i) of this AD, do a detailed inspection for discrepancies (including finish damage, corrosion, pitting, and base metal scratches) of the transition radius of the left and right MLG trunnion pins, and do all applicable repetitive inspections and related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013. Accomplishing the detailed inspections (initial and repetitive) and all applicable corrective actions specified in this paragraph terminates the repetitive lubrication requirements of paragraph (g) of this AD.

**(i) Optional Terminating Action**

Overhauling or replacing a trunnion pin in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013, ends the repetitive lubrication requirements of paragraph (g) of this AD, and the actions required by paragraph (h) of this AD, for that pin only.

**(j) Exception to Service Information Specifications**

Where Boeing Special Attention Service Bulletin 737–32–1402, Revision 1, dated February 7, 2013, specifies a compliance time ''from the date of Revision 1 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

**(k) Credit for Previous Actions**

This paragraph provides credit for the actions required by this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–32–1402, dated August 6, 2008.

**(l) Alternative Methods of Compliance (AMOCs)**

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

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

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

(4) AMOCs approved previously in accordance with AD 2009–24–07, Amendment 39–16095 (74 FR 62231, November 27, 2009), are approved as AMOCs for the corresponding actions required by paragraphs (g) and (h) of this AD.

**(m) Related Information**

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone 425–917–6440; fax 425–917–6590; email: *nancy.marsh@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19531 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0691; Directorate Identifier 2012–NM–170–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Learjet Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to certain Learjet Inc. Model 60 airplanes. The existing AD currently requires determining if a certain fuel crossflow tube is installed; and follow-on/corrective actions, as applicable. Since we issued that AD, we have received a report that airplanes produced since 2003 might also be subject to the unsafe condition; and that the minimum allowable clearance is not established in the airplane maintenance information, and therefore, must be addressed by this proposed AD. This proposed AD would retain all actions in the previous AD, and would require determining if a certain fuel crossflow tube is installed, performing repetitive measurements of the fuel crossflow tube and surrounding valves and cables, and doing corrective actions if applicable. In addition, this proposed AD expands the applicability of the existing AD. We are proposing this AD to prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

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

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

For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Jeff Janusz, Aerospace Engineer, Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316–946–4148; fax: 316–946–4107; email: *jeff.janusz@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0691; Directorate Identifier 2012–NM–170–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

On September 16, 2003, we issued AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003), for certain Learjet Inc. Model 60 airplanes. That AD requires a review of airplane maintenance records or an inspection to determine if a fuel crossflow tube having a certain part number is installed; and follow-on/corrective actions, as applicable. That AD resulted from reports of chafing of the fuel crossflow tube by flight control cables. We issued that AD to prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations.

### Actions Since Existing AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003) Was Issued

Since we issued AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003), we have received a report that airplanes produced since 2003 might be subject to the unsafe condition; and that the minimum allowable clearance is not established in the airplane maintenance information, and therefore, must be addressed by this proposed AD.

### FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Proposed AD Requirements

This proposed AD would retain all requirements of AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003). This proposed AD would retain all actions in the previous AD, and would require determining if a certain fuel crossflow tube is installed, performing repetitive measurements of the fuel crossflow tube and surrounding valve and cables, and doing corrective actions if applicable.

**Differences Between the AD and the Service Information**

Although Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998, applies to Learjet Inc. Model 60 airplanes, serial numbers 60–001 through 60–145 inclusive, this AD applies to Learjet Inc. Model 60 airplanes, serial numbers 60–001 through 60–409 inclusive. Airplanes having serial numbers 60–001 through 60–409 are subject to the unsafe condition. In addition, the minimum allowable clearance is not established in the airplane maintenance information, and therefore, a repetitive measurement is necessary. This difference has been coordinated with Learjet Inc.

**Change to Existing AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003)**

This proposed AD would retain all requirements of AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003). Since AD 2003–19–11 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003) | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) | paragraph (g) |
| paragraph (b) | paragraph (h) |
| paragraph (c) | paragraph (i) |
| paragraph (d) | paragraph (j) |

**Costs of Compliance**

We estimate that this proposed AD affects 264 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection [retained actions from AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003)]. | 2 work-hours × $85 per hour = $170 | $2 | $172 | $45,408 |

We estimate the following costs to do any necessary replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement | 4 work-hours × $85 per hour = $340 | $20 | $360 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003), and adding the following new AD:

**Learjet Inc.:** Docket No. FAA–2013–0691; Directorate Identifier 2012–NM–170–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 27, 2013.

**(b) Affected ADs**

This AD supersedes AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003).

**(c) Applicability**

This AD applies to Learjet Inc. Model 60 airplanes, certificated in any category, serial numbers 60–001 through 60–409 inclusive.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28, Fuel.

**(e) Unsafe Condition**

This AD was prompted by reports of chafing of the fuel crossflow tube by flight control cables. We are issuing this AD to prevent chafing and consequent failure of the fuel crossflow tube due to inadequate clearance between the tube and the flight control cables, which could result in loss of fuel from one fuel tank during normal operating conditions or loss of fuel from both main fuel tanks during fuel cross-feeding operations.

**(f) Compliance**

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

**(g) Retained Part Identification**

This paragraph restates the part identification required by paragraph (a) of AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003). For serial numbers 60–001 through 60–145 inclusive: Within 25 flight hours after November 3, 2003 (the effective date of AD 2003–19–11), inspect the fuel crossflow tube to determine whether part number (P/N) 6026020–005 is installed. Instead of inspecting the tube, a review of airplane maintenance records is acceptable if the P/N of the tube can be positively determined from that review.

**(h) Retained Clearance Measurement and Corrective Action for Airplanes Having Serial Numbers 60–001 Through 60–145, With Revised Repair Language**

This paragraph restates the clearance measurement and corrective action required by paragraph (b) of AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003), with revised repair language. For Learjet Inc. Model 60 airplanes, serial numbers 60–001 through 60–145 inclusive: If P/N 6026020–005 is found installed during the review or inspection required by paragraph (g) of this AD, before further flight, measure the clearance between the fuel crossflow tube and the flight control cables to determine if it is at least 0.35 inch, per paragraph 2.B.(8) of the Accomplishment Instructions of Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

**(i) Retained Part Replacement, Measurement, and Repair for Airplanes Having Serial Numbers 60–001 Through 60–055, With Revised Repair Language**

This paragraph restates the clearance measurement and corrective action required by paragraph (c) of AD 2003–19–11, Amendment 39–13314 (68 FR 55812, September 29, 2003), with revised repair language. For airplanes having serial numbers 60–001 through 60–055: If P/N 6026020–005 is not found installed during the review or inspection required by paragraph (g) of this AD, within 90 days after accomplishing the review or inspection, replace the existing fuel crossflow tube with a new fuel crossflow tube having P/N 6026020–005, and measure the clearance between the newly installed fuel crossflow tube and the flight control cables, per paragraph 2.A. of the Accomplishment Instructions of Bombardier Service Bulletin 60–28–4, Revision 2, dated August 22, 2001.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair in accordance with a method approved by the Manager, Wichita ACO, FAA. For a repair method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

**(j) Retained Part Replacement, Measurement, and Repair for Airplanes Having Serial Numbers 60–056 Through 60–145, With Revised Repair Language**

This paragraph restates the clearance measurement and corrective action required by paragraph (d) of AD 2003–19–11, Amendment 39–13314 (68 FR55812, September 29, 2003), with revised repair language. For airplanes having serial numbers 60–056 through 60–145: If P/N 6026020–005 is not found installed during the review or inspection required by paragraph (g) of this AD, within 90 days after accomplishing the review or inspection, replace the existing fuel crossflow tube with a new fuel crossflow tube having P/N 6026020–005, and measure the clearance between the newly installed fuel crossflow tube and the flight control cables to determine if the clearance is at least 0.35 inch, per paragraph 2.B. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, repair in accordance with a method approved by the Manager, Wichita ACO, FAA. For a repair method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Note 1 to paragraphs (h) and (j) of this AD: Bombardier Alert Service Bulletin A60–28–3, Revision 2, dated October 26, 1998, Figure 1, Detail D, incorrectly identifies the fuel crossflow tube to be installed as P/N 6026020–001. The manufacturer is aware of this error and stated it plans to correct the part number in the next revision of the service information.

**(k) New Part Identification**

For airplanes having serial numbers 60–001 through 60–409 inclusive: Within 25 flight hours after the effective date of this AD, inspect the fuel crossflow tube to determine whether P/N 6026020–005 is installed. In lieu of inspecting the tube, a review of airplane maintenance records is acceptable if the P/N of the tube can be positively determined from that review.

**(l) New Clearance Measurement**

If P/N 6026020–005 is found installed during the inspection required by paragraph (k) of this AD, before further flight, measure the clearance between the fuel crossflow tube and both elevator control cables to determine if it is 0.35 inches or more, in accordance with paragraph 2.A.(9) of the Accomplishment Instructions of Bombardier Optional Spares Service Bulletin 60–28–4, Revision 2, dated August 22, 2001.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, adjust the fit of the P/N 6026020–005 tube to provide 0.35 inch or more clearance to both elevator control cables, in accordance with paragraph 2.A.(9) of the Accomplishment Instructions of Bombardier Optional Spares Service Bulletin 60–28–4, Revision 2, dated August 22, 2001. If the tube shows any indication of chafing from the control cables, before further flight, replace the fuel cross flow tube with a new fuel cross flow tube, in accordance with paragraph 2.A.(9) of the Accomplishment Instructions of Bombardier Optional Spares Service Bulletin 60–28–4, Revision 2, dated August 22, 2001.

**(m) New Repetitive Measurements**

For all airplanes: As of the effective date of this AD and after accomplishing the inspection required by paragraph (g) or (k) of this AD, as applicable: Before further flight after removal, replacement, or adjustment of any crossflow tube, fuel cross flow drain valve, fuel cross flow valve or related plumbing and fittings, and elevator control cable, measure the clearance between the fuel crossflow tube and the flight control cables, in accordance with paragraph 2.A.(9) of the Accomplishment Instructions of Bombardier Optional Spares Service Bulletin 60–28–4, Revision 2, dated August 22, 2001.

(1) If the clearance is 0.35 inch or more, no further action is required by this paragraph.

(2) If the clearance is less than 0.35 inch, before further flight, adjust the fit of the P/N 6026020–005 tube to provide 0.35 inch or more clearance to both elevator control cables, in accordance with paragraph 2.A.(9) of the Accomplishment Instructions of Bombardier Optional Spares Service Bulletin 60–28–4, Revision 2, dated August 22, 2001.

**(n) Reporting Requirement**

Submit a report of the findings of the initial measurement required by paragraph (l) of this AD to the Wichita Manufacturing Inspection District Office, 2204 S. Tyler Rd, Wichita, KS, 67209–3001, at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD. The report must include the airplane registration, serial number, the total time in service, and the measured clearance found between the fuel crossflow tube and the elevator control cables after the initial inspection. Under the provisions of the

Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120 0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**(o) Part Installation Limitation**

As of the effective date of AD, only fuel crossflow tubes having P/N 6026020–005 may be installed on any airplane.

**(p) Paperwork Reduction Act Burden Statement**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(q) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Wichita ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

**(r) Related Information**

(1) For more information about this AD, contact Jeff Janusz, Aerospace Engineer, Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: 316–946–4148; fax: 316–946–4107; email: *jeff.janusz@faa.gov.*

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2013.

**Ross Landes,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19524 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0688; Directorate Identifier 2012–NM–221–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; EADS CASA (Type Certificate Previously Held by Construcciones Aeronáuticas, S.A.) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain EADS CASA (Type Certificate Previously Held by Construcciones Aeronáuticas, S.A.) Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, and C–212–DF airplanes. This proposed AD was prompted by a report of the propeller pitch control (PPC) lever becoming disconnected from the engine due to a missing bolt. This proposed AD would require modifying the PPC lever attachment system. We are proposing this AD to prevent PPC shaft disconnection, which could lead to a loss of propeller pitch control, possibly resulting in uncommanded change to the engine power settings and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

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

For EADS–CASA service information identified in this proposed AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* For Honeywell service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; Internet: *http://portal.honeywell.com;* telephone: 800–601–3099. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0688; Directorate Identifier 2012–NM–221–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://*

*www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0251, dated November 27, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An occurrence was reported where the propeller pitch control (PPC) lever disconnected from the engine (a TPE331–10R–511C) on a C–212–CC aeroplane.
>
> The result of the subsequent investigation revealed that the PPC lever disconnection occurred due to a missing bolt, which fixes the clamp that joins the PPC lever to the PPC rod.
>
> This condition, if not corrected, could lead to a loss of an affected propeller pitch control, possibly resulting in uncommanded change to the engine power settings and consequent reduced control of the aeroplane.
>
> To address this potential unsafe condition, EADS–CASA developed a modification (mod 10515) that eliminates the possibility of PPC shaft disconnection and made this available through Service Bulletin SB–212–76–0009 to be applied in service.
>
> For the reasons described above, this [EASA] AD requires modification of PPC lever attachment system.

You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

EADS CASA has issued Service Bulletin SB–212–76–0009, Revision 1, dated August 03, 2012. EADS CASA Bulletin SB–212–76–0009, Revision 1, dated August 03, 2012, refers to Honeywell Service Bulletin TPE331–72–2190, dated December 21, 2011, as an additional source of guidance for modifying the PPC lever attachment system. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

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

**Costs of Compliance**

We estimate that this proposed AD affects 42 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Modification | 20 work-hours × $85 per hour = $1,700 | $1,018 | $2,718 | $114,156 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory 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 AD:

**EADS CASA (Type Certificate Previously Held by Construcciones Aeronáuticas, S.A.):** Docket No. FAA–2013–0688; Directorate Identifier 2012–NM–221–AD.

**(a) Comments Due Date**

We must receive comments by September 27, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to EADS CASA (Type Certificate previously held by Construcciones Aeronáuticas, S.A.) Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, and C–212–DF airplanes; certificated in any category; all serial numbers, except those that have been modified in production to incorporate EADS CASA Modification 10515.

**(d) Subject**

Air Transport Association (ATA) of America Code 76, Engine Controls.

**(e) Reason**

This AD was prompted by a report of the propeller pitch control (PPC) lever becoming disconnected from the engine due to a missing bolt. We are issuing this AD to prevent PPC shaft disconnection, which could lead to a loss of propeller pitch control, possibly resulting in uncommanded change to the engine power settings and consequent reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Modification**

Within 24 months after the effective date of this AD, modify the propeller pitch control (PCC) lever attachment system of the aircraft engine, in accordance with the Accomplishment Instructions of EADS–CASA Service Bulletin SB–212–76–0009, Revision 1, dated August 03, 2012.

Note 1 to paragraph (g) of this AD: EADS–CASA Service Bulletin SB–212–76–0009, Revision 1, dated August 03, 2012, refers to Honeywell Service Bulletin TPE331–72–2190, dated December 21, 2011, as an additional source of guidance for modifying the cam assembly.

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(i) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0251, dated November 27, 2012 and EADS–CASA Service Bulletin SB–212–76–0009, Revision 1, dated August 03, 2012, for related information.

(2) For EADS–CASA service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* For Honeywell service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; Web site: *http://portal.honeywell.com;* or call Honeywell toll free at phone: 800–601–3099 (U.S./Canada) or 602–365–3099 (International Direct). You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 1, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19535 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0673; Directorate Identifier 2013–NM–057–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; the Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 707 airplanes; and Model 720 and 720B series airplanes. This proposed AD was prompted by reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. This proposed AD would require an inspection of the left- and right-hand wing fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations, and to replace any door with an impact-resistant access door if necessary. This proposed AD also would require an inspection for stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. This proposed AD would also require revising the maintenance program to incorporate changes to the airworthiness limitations section. We are proposing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

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

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

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax:

425–917–6590; email: *suzanne.lucier@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0673; Directorate Identifier 2013–NM–057–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We received reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. This condition, if not corrected, could result in foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

**Relevant Service Information**

We reviewed Boeing Service Bulletin 707–3532, dated January 12, 2012; and critical design configuration control limitations (CDCCL) Task 57–AWL–01, Impact-Resistant Fuel Tank Access Doors, of Subsection B, Airworthiness Limitations (AWLs) of Section B, of the Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, Revision September 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0673.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

**Proposed AD Requirements**

The FAA issued section 121.316 of the Federal Aviation Regulations (14 CFR 121.316) requiring that each turbine powered transport category airplane meet the requirements of section 25.963(e) of the Federal Aviation Regulations (14 CFR 25.963(e)). Section 25.963(e) outlines the certification requirements for fuel tank access covers on turbine powered transport category airplanes.

This proposed AD would require inspecting fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations and replacing any door with an impact-resistant access door if necessary; inspecting application of stencils and index markers of impact-resistant access doors and application of new stencils or index markers if necessary; and revising the maintenance program.

This proposed AD requires revisions to certain operator maintenance documents to include a new CDCCL. Compliance with CDCCLs is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator might not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to the procedures specified in paragraph (j) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

This proposed AD would require accomplishing the actions specified in the service information identified previously. After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

**Costs of Compliance**

We estimate that this proposed AD affects 13 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | Up to 12 work-hours × $85 per hour = $1,020. | $0 | $1,020 | $13,260 |
| Maintenance program revision | 1 work-hour × $85 per hour = $85 | 0 | 85 | 1,105 |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement per door | $3 work-hours × $85 per hour = $255. | $8,000 | $8,255 |
| Stencil and index marker (16 to 18 doors per airplane) | 1 work-hour per door × $85 per hour = $85 per door. | 0 | 1,530 |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

*List of Subjects in 14 CFR Part 39*

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2013–0673; Directorate Identifier 2013–NM–057–AD.

**(a) Comments Due Date**

We must receive comments by September 27, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 707–100 long body, -200, -100B long body, and -100B short body series airplanes; and Model 707–300, -300B, -300C, and -400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category; as identified in Boeing Service Bulletin 707–3532, dated January 12, 2012.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

**(e) Unsafe Condition**

This AD was prompted by reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

**(f) Compliance**

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

**(g) Inspections**

Within 72 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 707–3532, dated January 12, 2012.

(1) Do either a general visual inspection or ultrasonic non-destructive test of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations. If any standard access door is found, before further flight, replace with an impact-resistant access door, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 707–3532, dated January 12, 2012.

(2) Do a general visual inspection of the left- and right-hand wing fuel tank impact-resistant access doors to verify stencils and index markers are applied. If a stencil or index marker is missing, before further flight, apply stencil or index marker, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 707–3532, dated January 12, 2012.

**(h) Maintenance Program Revision**

Within 60 days after the effective date of this AD, revise the maintenance program to incorporate Critical Design Configuration Control Limitations (CDCCL) Task 57–AWL–01, Impact-Resistant Fuel Tank Access Doors, of Subsection B, Airworthiness Limitations (AWLs) of the Boeing 707/720 Airworthiness Limitations (AWLs) Document D6–7552–AWL, Revision September 2012.

**(i) No Alternative Actions, Intervals, and/or CDCCLs**

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

**(j) Alternative Methods of Compliance (AMOCs)**

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

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

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

**(k) Related Information**

(1) For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services

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

Issued in Renton, Washington, on August 2, 2013.

**Ross Landes,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19525 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0689; Directorate Identifier 2012–NM–225–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by a report that a batch of main landing gear (MLG) door actuators with a certain part number having certain serial numbers could be assembled with the scraper installed backward. This proposed AD would require repetitive functional checks of the MLG alternate extension system (AES) and eventual replacement of certain MLG door actuators with actuators that have either been reworked or do not have certain serial numbers. We are proposing this AD to prevent incorrectly installed scrapers, which could hinder the operation of the MLG AES, and result in failure of the MLG AES on one side, and consequent unsafe asymmetrical landing configuration.

**DATES:** We must receive comments on this proposed AD by September 27, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Luke Walker, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7363; fax 516–794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0689; Directorate Identifier 2012–NM–225–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–28R1, dated November 26, 2012, (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was discovered that a batch of [main landing gear] MLG door actuators, [part number] P/N 46830–7, may be assembled with the scraper installed backwards. This condition, if not corrected, could result in increased actuator friction, which could hinder operation of the MLG alternate extension system (AES). In the case of a failure of the primary MLG extension system, the failure of the MLG AES on one side will lead to an unsafe asymmetrical landing configuration.
>
> This [Canadian] AD mandates the repetitive functional check of the AES until replacement of the affected MLG door actuators.

You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–32–108, Revision A, dated October 1, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

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

### Costs of Compliance

We estimate that this proposed AD affects 2 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Actions | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Records check, functional check, replacement of actuators. | 17 work-hours × $85 per hour = $1,445 | $128 | $1,573 | $3,146 |

**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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory 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 AD:

**Bombardier, Inc.:** Docket No. FAA–2013–0689; Directorate Identifier 2012–NM–225–AD.

**(a) Comments Due Date**

We must receive comments by September 27, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing gear.

**(e) Reason**

This AD was prompted by a report that a batch of main landing gear (MLG) door actuators with a certain part number having certain serial numbers could be assembled with the scraper installed backward. We are issuing this AD to prevent incorrectly installed scrapers, which could hinder the operation of the MLG alternate extension system (AES), and result in failure of the MLG AES on one side, and consequent unsafe asymmetrical landing configuration.

**(f) Compliance**

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

**(g) Inspection To Determine Part Number of MLG Door Actuators**

Within 50 flight hours after the effective date of this AD, inspect the MLG door actuators to determine whether part number (P/N) 46830–7 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the MLG door actuator can be conclusively determined from that review.

**(h) Functional Check of the MLG AES**

If during the inspection to determine the part number of the MLG actuators as required by paragraph (g) of this AD, any MLG door actuator having P/N 46830–7 is identified or the P/N is unable to be determined: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, do a functional check of the MLG AES, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–108, Revision A, dated October 1, 2012. Repeat the functional check thereafter at intervals not to exceed 50 flight cycles until the actions required by paragraph (i) of this AD are done. If the force applied during the functional check exceeds 67 pound-force (lbf), before further flight, replace the affected actuator, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–108, Revision A, dated October 1, 2012.

(1) For airplanes with MLG door actuators that have accumulated more than 950 total flight hours as of the effective date of this AD: Within 50 flight hours after the effective date of this AD.

(2) For airplanes with MLG door actuators that have accumulated 950 total flight hours or less as of the effective date of this AD: Within 1,000 flight hours after the effective date of this AD.

**(i) Terminating Action for Repetitive Functional Checks**

At the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD: Replace all MLG door actuators having P/N 46830–7 and a serial number included in paragraph 1.A. ''Effectivity,'' of Bombardier Service Bulletin 84–32–108, Revision A, dated October 1, 2012, with MLG door actuators reworked in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–108, Revision A, dated October 1, 2012, or with a MLG door actuator having P/N 46830–7 and a serial number that is not included in section 1.A. ''Effectivity,'' of Bombardier Service Bulletin 84–32–108, Revision A, dated October 1, 2012. Installation of a MLG door actuator having P/N 16830–7 with ''Mod Status 32–106'' on the identification plate is acceptable for compliance with the requirements of this paragraph.

(1) Prior to the accumulation of 3,000 total flight hours on any MLG door actuator, or within 50 flight hours after the effective date of this AD, whichever occurs later.

(2) Within 12 months or 2,000 flight hours after the effective date of this AD, whichever occurs first.

**(j) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–32–108, dated September 6, 2012, which is not incorporated by reference in this AD.

**(k) Parts Installation Limitations**

As of the effective date of this AD, no person may install a MLG door actuator having P/N 16830–7, with a serial number identified in paragraph 1.A. ''Effectivity,'' of Bombardier Service Bulletin 84–32–108, Revision A, dated October 1, 2012, unless ''Mod Status 32–106'' is on the identification plate.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2012–28R1, dated November 26, 2012, for related information. The MCAI can be found in the AD docket on the Internet at *http://www.regulations.gov*.

(2) For service information identified in this AD, contact Bombardier, Inc., Q Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com; Internet http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 1, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19529 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–132251–11]**

**RIN 1545–BK51**

## Relief From Joint and Several Liability

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to relief from joint and several tax liability under section 6015 of the Internal Revenue Code (Code) and relief from the Federal income tax liability resulting from the operation of state community property laws under section 66. The proposed regulations provide guidance to taxpayers on when and how to request relief under sections 66 and 6015. This document also invites comments from the public regarding these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 12, 2013.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–132251–11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–132251–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC; or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–132251–11).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Mark Shurtliff at (202) 622–4910; concerning submissions of comments and requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 6013(a) of the Code permits taxpayers who are husband and wife to file a joint Federal income tax return. Married individuals who choose to file a joint income tax return are each jointly and severally liable under section 6013(d)(3) for the tax arising from that return, which, pursuant to sections 6601(e)(1) and 6665(a)(2), includes any additions to tax, additional amounts, penalties, and interest. Because the liability is joint and several, the IRS is authorized to collect the entire amount from either spouse, without regard to which spouse the items of income, deduction, credit, or basis that gave rise to the liability are attributable.

Section 6015 was enacted in 1998 to provide relief from joint and several liability in certain circumstances. Section 6015 sets forth three bases for relief from joint and several liability. First, section 6015(b) allows a taxpayer to elect relief from understatements of tax attributable to erroneous items of the other spouse if the taxpayer had no reason to know of the understatement and, taking into account all the facts and circumstances, it is inequitable to hold the taxpayer liable. Second, section 6015(c) allows a taxpayer who is divorced or legally separated from, or no longer living with, the spouse or former spouse with whom the joint return was filed to elect to allocate a deficiency (or a portion of a deficiency) to the other spouse, as if the spouses had filed separate tax returns. Third, section 6015(f) provides that a taxpayer may request, under ''procedures prescribed by the Secretary,'' relief from a tax understatement or underpayment when the taxpayer does not qualify for relief under the other two subsections and it would be inequitable to hold the taxpayer liable considering all the facts and circumstances.

Section 6015(h) directs the Treasury Department and the IRS to prescribe such regulations as are necessary to carry out the provisions of section 6015. The Treasury Department and the IRS exercised that authority by promulgating regulations under section 6015 on July 18, 2002 (TD 9003, 67 FR 47278). Sections 1.6015–2, 1.6015–3, and 1.6015–4 of the final regulations provide guidance on the bases for relief in section 6015(b), (c), and (f), respectively. Section 1.6015–5 provides rules on the time and manner to request section 6015 relief.

By their terms, paragraphs (b) and (c) of section 6015 impose a two-year deadline for a taxpayer to elect the application of either subsection. Under the deadline, a taxpayer must make the election no later than two years after the date of the IRS's first collection activity with respect to the taxpayer. See section 6015(b)(1)(E) and (c)(3)(B). In contrast, paragraph (f) of section 6015 does not

contain an explicit deadline to request relief. In accordance with the authority in section 6015(f) to prescribe procedures for the administration of equitable relief, the Treasury Department and the IRS, beginning in 1998, prescribed in published guidance a two-year deadline to request equitable relief under section 6015(f) to be consistent with the statutory time limit to claim relief under section 6015(b) and (c). The two-year deadline to request equitable relief was first prescribed in Notice 98–61 (1998–2 CB 758 (December 21, 1998)) (see § 601.601(d)(2)(ii)(*b*) of this chapter). The two-year deadline was reiterated in Rev. Proc. 2000–15 (2000–1 CB 447), which was superseded by Rev. Proc. 2003–61 (2003–2 CB 296), and ultimately adopted in the regulations under section 6015, which were issued on July 18, 2002, as § 1.6015–5(b)(1).

Besides establishing when and how to request relief from joint and several liability, § 1.6015–5 also defines key terms, such as ''collection activity,'' sets forth examples illustrating the time and manner provisions, and explains the effect of a final administrative determination.

In *Lantz* v. *Commissioner,* 132 T.C. 131 (2009), the Tax Court considered for the first time whether the two-year deadline to request equitable relief was valid. After analyzing the issue under the standard for judicial review of an agency regulation, the Tax Court held the two-year deadline for equitable relief in § 1.6015–5(b)(1) invalid. The *Lantz* decision was reversed on appeal by the United States Court of Appeals for the Seventh Circuit in an opinion upholding the validity of the deadline to request equitable relief. *Lantz* v. *Commissioner,* 607 F.3d 479 (7th Cir. 2010). After *Lantz,* the Tax Court continued to find the two-year deadline invalid in cases not appealable to the Seventh Circuit but the deadline was upheld again in *Mannella* v. *Commissioner,* 631 F.3d 115 (3d Cir. 2011), and *Jones* v. *Commissioner,* 642 F.3d 459 (4th Cir. 2011).

Notwithstanding the validity of the regulation setting the two-year deadline, the Treasury Department and the IRS considered whether to retain the deadline and determined, in the interest of tax administration, that the time period to request equitable relief under section 6015(f) should be extended. As announced in Notice 2011–70 (2011–32 IRB 135 (Aug. 8, 2011)), the two-year deadline no longer applies to requests for equitable relief under section 6015(f). In place of the prior two-year deadline, Notice 2011–70 provides that, to be considered for equitable relief, a request must be filed with the IRS within the period of limitation for collection of tax in section 6502 or, for any credit or refund of tax, within the period of limitation in section 6511. Notice 2011–70 explains that the regulations under section 6015 will be revised to reflect the change. These proposed regulations reflect the changes made by Notice 2011–70. Notice 2011–70 has no effect on the two-year deadline to elect relief under section 6015(b) (and § 1.6015–2) or section 6015(c) (and § 1.6015–3).

Notice 2011–70 specifies transitional rules that apply until the Treasury Department and the IRS amend the regulations under section 6015. Under the transitional rules, the two-year deadline does not apply to any request for equitable relief filed on or after July 25, 2011 (the date Notice 2011–70 was issued) or any request already filed and pending with the IRS as of that date. The transitional rules provide that the IRS will consider these current and future requests for equitable relief if they were filed within the applicable limitation period under section 6502 or 6511. As for past requests for equitable relief—requests that the IRS denied as untimely under the two-year deadline—the notice allows the individuals who filed those requests to reapply for equitable relief, unless the individual litigated the denial or the denial included a determination that the individual was not entitled to equitable relief on the merits. In addition, Notice 2011–70 provides separate rules for claiming equitable relief with respect to litigated cases.

A similar rule is added to § 1.66–4 for claims for equitable relief under section 66(c). Section 66(c) provides two avenues for married taxpayers who do not file a joint Federal income tax return in a community property state to request relief from the operation of the state community property laws. Under state law, each spouse generally is responsible for the tax on one-half of all the community income for the year. Traditional relief under section 66(c) allows the requesting spouse to avoid liability for tax on community income of which the requesting spouse did not know and had no reason to know. If a requesting spouse does not satisfy the requirements for traditional relief, the Secretary may grant equitable relief. The IRS uses the same procedures for determining eligibility for equitable relief under section 66(c) as it does for equitable relief under section 6015(f). As a result, it is appropriate for the IRS to use the same timing rules for consideration of requests for equitable relief, whether under section 66(c) or section 6015(f).

**Explanation of Provisions**

The Treasury Department and the IRS propose to amend the provisions of § 1.6015–5 on the time and manner for requesting relief from joint and several liability under section 6015. A similar rule is added to § 1.66–4(j)(2)(ii) for claims for equitable relief from the Federal income tax liability resulting from the operation of state community property law.

*1. Requesting Relief as Part of Collection Due Process*

The proposed regulations revise § 1.6015–5(a) to reflect that a requesting spouse (defined in § 1.6015–1(h)(1)) may elect the application of section 6015(b) [§ 1.6015–2 ] or section 6015(c) [§ 1.6015–3] or request equitable relief under section 6015(f) [§ 1.6015–4] as part of the collection due process (CDP) hearing procedures under sections 6320 and 6330. A corresponding change is made to § 1.6015–5(c)(1) to clarify that, although section 6015 relief may be raised in a CDP proceeding, a requesting spouse may not request section 6015 relief in the course of a CDP hearing if the requesting spouse previously requested section 6015 relief and the IRS ruled on that request by issuing a final administrative determination. These proposed regulations do not change existing CDP hearing procedures. See § 301.6330–1(e)(2). Rather, these changes make the regulations under section 6015 consistent with the regulations under section 6330.

*2. Time To Request Relief*

Section 1.6015–5(b) of the proposed regulations retains the two-year deadline, measured from the date of the first collection activity, to elect the application of § 1.6015–2 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(b)) or 1.6015–3 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(c)). In accordance with Notice 2011–70, the deadline is removed for a request for equitable relief under § 1.6015–4 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(f)) and replaced with a requirement that a request for equitable relief must be filed with the IRS within the period of limitation in section 6502 for collection of tax or the period of limitation in section 6511 for credit or refund of tax, as applicable to the specific request. A similar rule is added

to § 1.66–4(j)(2)(ii) for claims for equitable relief from the Federal income tax liability resulting from the operation of state community property law.

Under section 6502(a)(1), the period of limitation on collection of tax is normally ten years after the date of assessment of the tax, although it may be extended by other provisions of the Code. Under section 6511(a), the period of limitation to claim a credit or refund of tax is generally the later of three years after the date a tax return for the taxable period was filed or two years after the date the tax was paid. If no return was filed, the two-year period applies.

Section 1.6015–5(b)(2) of the proposed regulations explains that if a requesting spouse files a request for equitable relief under § 1.6015–4 within the limitation period on collection of tax, the IRS will consider the request, but any relief in the form of a tax credit or refund depends on whether the limitation period for credit or refund was also open as of the date the claim for relief was filed and the other requirements relating to credits or refunds are satisfied. In cases in which the limitation period for credit or refund happens to be the longer of the two periods and is open when a request for equitable relief is filed, the request can be considered for a potential refund or credit of any amounts collected or otherwise paid by the requesting spouse during the applicable look-back period of section 6511(b)(2), even if the collection period is closed.

If a request for equitable relief is filed after the expiration of the limitation period for collection of a joint tax liability, the IRS is barred from collecting any remaining unpaid tax from the requesting spouse. Similarly, if a request for equitable relief under § 1.6015–4 is filed after the expiration of the limitation period for a credit or refund of tax, section 6511(b)(1) bars the IRS from allowing, and a taxpayer from receiving, a credit or refund. The proposed regulations provide, therefore, that the IRS will not consider an individual's request to be equitably relieved from a tax that is no longer legally collectible.

*3. Collection Activity*

The proposed regulations clarify what constitutes collection activity for purposes of starting the two-year deadline that continues to apply to §§ 1.6015–2 and 1.6015–3.

A notice of intent to levy and right to request a CDP hearing (section 6330 notice) is a type of collection activity that starts the two-year period applicable to applications to elect relief under §§ 1.6015–2 and 1.6015–3. The proposed regulations at § 1.6015–5(b)(3)(ii) clarify that the two-year period will start irrespective of a requesting spouse's actual receipt of the section 6330 notice, if the notice was sent by certified or registered mail to the requesting spouse's last known address. This clarification is consistent with the holding in *Mannella* v. *Commissioner,* 132 T.C. 196 (2009), *rev'd on other grounds,* 631 F.3d 115 (3d Cir. 2011).

*4. Examples*

Section 1.6015–5 in its current form contains several examples intended to illustrate how the timing rules for requesting relief under section 6015 operate. The proposed regulations update these examples to reflect the proposed changes to the timing rules. Thus, *Example 1* is revised to explicitly limit it to elections under § 1.6015–2 or 1.6015–3. *Example 2* illustrates the operation of both the two-year deadline for purposes of §§ 1.6015–2 and 1.6015–3 and the periods of limitation that apply to equitable relief requests under § 1.6015–4, including a situation in which the requesting spouse will still be considered for relief for unpaid amounts even though the limitation period for credit or refund had expired when the request was filed as discussed in § 1.6015–5(b)(2). *Example 3* is principally intended to illustrate that collection activity against a nonrequesting spouse (defined in § 1.6015–1(h)(2)) does not begin the time in which a requesting spouse must elect the application of § 1.6015–2 or 1.6015–3. *Example 4* illustrates the rule of § 1.6015–5(c)(3)(i) that a section 6330 notice sent to a requesting spouse's last known address, even if not actually received by the requesting spouse, is a collection activity for purposes of the timing rules, but the issuance of the notice, or the time between the mailing of the notice and the filing of a request for relief, does not affect the IRS's consideration of equitable relief under § 1.6015–4 as no two-year deadline applies. *Example 5* illustrates the timing rules in § 1.6015–5(b)(2) under which if a requesting spouse has paid some or all of a joint tax liability, or if the IRS has collected all or a part of the liability from a requesting spouse, the requesting spouse will be considered for equitable relief under § 1.6015–4 if the requesting spouse filed for relief within the limitation period for a credit or refund of tax, even though the limitation period for collection of tax was expired when the request was filed. The example further illustrates that in a case of payments or collection activity over time, a requesting spouse is eligible for a credit or refund only for amounts of tax for which the period of limitation allows a credit or refund as of when the request for relief was filed. The last example, *Example 6,* builds off of *Example 5* and illustrates a situation in which the IRS will not consider a request for equitable relief under § 1.6015–4 because both the limitation period for a credit or refund of tax and the limitation period for collection of tax had expired as of the date the claim for relief was filed.

*5. Reconsideration and Effect of a Final Administrative Determination*

The proposed regulations also revise § 1.6015–5(c), which prescribes the effect of a final administrative determination. Under § 1.6015–5(c)(1), a requesting spouse generally is entitled to submit only one request for relief under section 6015 from a joint tax liability (except as provided in § 1.6015–1(h)(5)), and the IRS will issue only one final administrative determination. The proposed regulations clarify in § 1.6015–5(c)(1) that after a final administrative determination, a requesting spouse may not, even under the procedures for a CDP hearing, again request relief under section 6015 with respect to the same joint tax liability.

Consistent with the general restriction, but to provide flexibility within that framework, the IRS has developed procedures in the Internal Revenue Manual (Chapter 25.15.17 (Rev. 03/08/2013)) to reconsider a final administrative determination if a requesting spouse submits additional information not previously submitted and considered and the requesting spouse did not petition the Tax Court from the prior final administrative determination. If the requesting spouse did petition the Tax Court, then the requesting spouse is not eligible for reconsideration unless the Tax Court case was dismissed for lack of jurisdiction. A reconsideration process allows for relief in situations where a requesting spouse was unable to initially provide the information, such as the requesting spouse not fully understanding how to file a complete request for relief under section 6015. The reconsideration process, however, does not replace the IRS's final administrative determination for purposes of determining whether Tax Court review is available or whether a Tax Court petition was timely filed. A request for reconsideration is not a qualifying election (''the first timely claim for relief from joint and several liability for the tax year for which relief is sought'') under § 1.6015–2 or 1.6015–3, or request under § 1.6015–4, for

purposes of § 1.6015–1(h)(5), and does not trigger the restrictions on collection pursuant to section 6015(e)(1)(B) or the suspension of the collection period of limitation under section 6015(e)(2). A reconsideration letter (formerly Letter 4277C and currently either Letter 5186C, Letter 5187C, or Letter 5188C)) is not a final determination letter for purposes of section 6015(e) and § 1.6015–7. Accordingly, a requesting spouse who receives a reconsideration letter may not petition the Tax Court to challenge a denial of relief following the IRS's reconsideration even if the requesting spouse provided new information not previously considered. The proposed regulations add a new provision to § 1.6015–5(c) acknowledging the reconsideration process but also providing that the reconsideration letter is not the IRS's final determination and is not subject to review by the Tax Court.

The general restriction in the regulations to one request for relief under section 6015 per tax liability and one final administrative determination of that request does not prohibit a requesting spouse from reapplying for equitable relief under § 1.6015–4 pursuant to the terms of Notice 2011–70 if the requesting spouse's request for relief under § 1.6015–4 was denied solely for being untimely and that denial was not litigated. The notice allows individuals who filed requests for equitable relief that were denied by the IRS solely on the basis of the two-year deadline and were not litigated to reapply to the IRS for equitable relief. A Form 8857, ''Request for Innocent Spouse Relief,'' or substitute written statement, signed under the penalties of perjury, filed as a reapplication for equitable relief under Notice 2011–70 is not considered a second request, and the resulting determination will be the final administrative determination for purposes of the regulations. A reapplication under Notice 2011–70 is not a reconsideration under the IRS's reconsideration process, and a denial of equitable relief on reapplication may be timely petitioned to the Tax Court for review.

**Proposed Effective/Applicability Date**

Except as provided below, these proposed regulations are effective as of the date that final regulations are published in the **Federal Register**. For proposed dates of applicability, see § 1.6015–9.

Notice 2011–70 announced that the Treasury Department and the IRS intended to amend the regulations under section 6015 to remove the requirement that taxpayers request equitable relief under section 6015(f) and § 1.6015–4 within two years of the first collection activity. Under section 7805(b)(1)(C), the proposed regulations provide that § 1.6015–5(b)(1) and (b)(2) will be effective as of July 25, 2011, the date that Notice 2011–70 was issued to the public.

**Statement of Availability for IRS Documents**

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at *http://www.irs.gov.*

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments submitted by the public will be made available for public inspection and copying at *http://www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these proposed regulations are Stuart Murray and Mark Shurtliff of the Office of the Associate Chief Counsel, Procedure and Administration.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

Section 1.66–4 also issued under 26 U.S.C. 66(c). * * *

Section 1.6015–5 also issued under 26 U.S.C. 6015(h). * * *

Section 1.6015–9 also issued under 26 U.S.C. 6015(h). * * *

■ **Par. 2.** In § 1.66–4, paragraph (j)(2)(ii) is revised to read as follows:

**§ 1.66–4 Request for relief from the Federal income tax liability resulting from the operation of community property law.**

* * * * *

(j) * * *

(2) * * *

(ii) *Equitable relief.* The earliest time for submitting a request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section is the date the requesting spouse receives notification of an audit or a letter or notice from the IRS stating that there may be an outstanding liability with regard to that year (as described in paragraph (j)(2)(iii) of this section). A request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid is properly submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed. To request equitable relief under § 1.66–4, a requesting spouse must file Form 8857, ''Request for Innocent Spouse Relief,'' or other similar statement with the IRS within the period of limitation on collection of tax in section 6502 or within the period of limitation on credit or refund of tax in section 6511, as applicable to the tax liability. If a requesting spouse files a request for equitable relief under § 1.66–4 within the period of limitation on collection of tax, the IRS will consider the request for

equitable relief, but the requesting spouse will be eligible for a credit or refund of tax only if the limitation period for credit or refund of tax is open when the request is filed (assuming all other requirements are met, including the limit on amount of credit or refund prescribed in section 6511(b)(2)). Alternatively, if a requesting spouse files a request for equitable relief after the period of limitation on collection of tax has expired but while the limitation period on credit or refund of tax remains open, the IRS will consider the request for equitable relief insofar as tax was paid by or collected from the requesting spouse, and the requesting spouse will be eligible for a potential credit or refund of tax. If neither the section 6502 nor section 6511 limitation period is open when a requesting spouse files a request for equitable relief, the IRS will not consider the request for equitable relief.

* * * * *

■ **Par. 3.** Section 1.66–5 is revised to read as follows:

**§ 1.66–5 Effective/applicability date.**

Except for § 1.66–4(j)(2)(ii), sections 1.66–1 through 1.66–4 are applicable on July 10, 2003. Section 1.66–4(j)(2)(ii) applies to any request for relief filed on or after July 25, 2011 (the date that Notice 2011–70, 2011–32 IRB, was issued to the public).

■ **Par. 4.** Section 1.6015–0 is amended as follows:

■ 1. In § 1.6015–5, revising the entry for paragraph (a) as new entry for paragraph (a)(1) and adding a new entry for paragraph (a)(2); entries for paragraphs (b)(1) through (b)(5) are revised; entries for paragraphs (b)(2)(i) and (b)(2)(ii) are removed; and new entries are added for paragraphs (b)(3)(i), (b)(3)(ii), (b)(6), (c)(1), (c)(2), and (c)(3).

■ 2. Section 1.6015–9 heading is revised.

The additions and revisions read as follows:

**§ 1.6015–0 Table of contents.**

* * * * *

**§ 1.6015–5 Time and manner for requesting relief.**

(a) Requesting relief.

(1) In general.

(2) Requesting relief as part of a collection due process hearing.

(b) * * *

(1) Relief other than equitable relief.

(2) Equitable relief.

(3) Definitions.

(i) Collection activity.

(ii) Section 6330 notice.

(4) Requests for relief made before commencement of collection activity.

(5) Examples.

(6) Premature requests for relief.

(c) * * *

(1) In general.

(2) Reconsideration process.

(3) Examples.

* * * * *

**§ 1.6015–9 Effective/applicability date.**

■ **Par. 5.** Section 1.6015–5 is amended to read as follows:

■ 1. Paragraph (a) is amended by designating the introductory text as (a)(1), adding a new heading for paragraph (a)(1) introductory text, and adding new paragraph (a)(2).

■ 2. Paragraph (b)(1) is revised.

■ 3. Paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) are redesignated as paragraphs (b)(3), (b)(4), (b)(5), and (b)(6).

■ 4. New paragraph (b)(2) is added.

■ 5. Newly-designated paragraphs (b)(3)(ii), (b)(4), (b)(5), and (b)(6) are revised.

■ 6. Paragraph (c)(1) is amended by adding a new sentence at the end of the paragraph.

■ 7. Paragraph (c)(2) is redesignated as paragraph (c)(3) and revised and new paragraph (c)(2) is added.

The revisions and additions read as follows:

**§ 1.6015–5 Time and manner for requesting relief.**

(a) *Requesting relief*—(1) *In general.* * * *

(2) *Requesting relief as part of a collection due process hearing.* A requesting spouse may also elect the application of § 1.6015–2 or 1.6015–3, or request equitable relief under § 1.6015–4, pursuant to the collection due process (CDP) hearing procedures under sections 6320 and 6330, by attaching Form 8857, ''Request for Innocent Spouse Relief,'' or an equivalent written statement to Form 12153, ''Request for a Collection Due Process or Equivalent Hearing'' (or other specified form).

(b) * * * (1) *Relief other than equitable relief.* To elect the application of § 1.6015–2 or 1.6015–3, a requesting spouse must file Form 8857 or other similar statement with the IRS no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Equitable relief.* To request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857 or other similar statement with the IRS within the period of limitation on collection of tax in section 6502 or within the period of limitation on credit or refund of tax in section 6511, as applicable to the joint tax liability. If a requesting spouse files a request for equitable relief under § 1.6015–4 within the period of limitation on collection of tax, the IRS will consider the request for equitable relief, but the requesting spouse will be eligible for a credit or refund of tax only if the limitation period for credit or refund of tax is open when the request is filed (assuming all other requirements are met, including the limit on amount of credit or refund prescribed in section 6511(b)(2)). Alternatively, if a requesting spouse files a request for equitable relief after the period of limitation on collection of tax has expired but while the limitation period on credit or refund of tax remains open, the IRS will consider the request for equitable relief insofar as tax was paid by or collected from the requesting spouse, and the requesting spouse will be eligible for a potential credit or refund of tax. If neither the section 6502 nor section 6511 limitation period is open when a requesting spouse files a request for equitable relief, the IRS will not consider the request for equitable relief. See § 1.6015–1(g).

(3) * * *

(ii) *Section 6330 notice.* A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the IRS's intent to levy and of their right to a CDP hearing. The mailing of a section 6330 notice by certified mail to the requesting spouse's last known address is sufficient to start the two-year period, described in paragraph (b)(1), regardless of whether the requesting spouse actually receives the notice.

(4) *Requests for relief made before commencement of collection activity.* Except as provided in paragraph (b)(6) of this section, an election under § 1.6015–2 or 1.6015–3 or a request for equitable relief under § 1.6015–4 may be made before any collection activity has commenced. For example, an election or request for equitable relief may be made in connection with an examination of a joint Federal income tax return or a demand for payment, or pursuant to the CDP hearing procedures of section 6320 with respect to the filing of a Notice of Federal Tax Lien. A request for equitable relief under § 1.6015–4 for a liability that is properly reported on a joint Federal income tax return but not paid with the return or by the due date for payment is properly submitted at any time after the return is filed.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b):

*Example 1.* On January 12, 2009, the IRS mailed a section 6330 notice to H and W, by certified mail to their last known address, regarding their 2007 joint Federal income tax

liability, which was the result of an understatement. The section 6330 notice was the first collection activity the IRS initiated against H and W to collect the 2007 joint liability. H and W did not request a CDP hearing in response to the section 6330 notice. On June 5, 2009, the IRS issued a levy on W's wages to W's employer. On July 10, 2009, the IRS issued a levy on H's wages to H's employer. To be considered for relief under § 1.6015–2 or 1.6015–3, a Form 8857 or other request for relief must be filed on or before January 12, 2011, which is two years after the IRS sent the section 6330 notice. The two-year period for purposes of §§ 1.6015–2 and 1.6015–3 (not applicable to § 1.6015–4) runs from the date the section 6330 notice was mailed and not from the date of the actual levy.

*Example 2.* On May 5, 2011, the IRS offset W's overpayment from W's 2010 separate Federal income tax return in the amount of $2,000 to H and W's joint tax liability for 2009 of $5,000, for which H and W filed a joint return on April 15, 2010. The offset is the first collection activity the IRS initiated against W to collect the 2009 joint liability. On October 3, 2013, W requests relief under section 6015. W's request is not timely under §§ 1.6015–2 and 1.6015–3 because the request was made more than two years after the IRS's first collection activity against W—the offset of W's overpayment from 2010. As to equitable relief under § 1.6015–4, the period of limitation on collection is open when W files her request, and the request can be considered for equitable relief of the unpaid tax of $3,000. W is not, however, eligible for any credit or refund of the $2,000 amount that the IRS applied against H and W's 2009 joint liability, because the period of limitation on credit or refund of tax for 2009 is no longer open when W files her request for relief. Under section 6511(a), a credit or refund of tax must generally be claimed within three years after the filing date of a tax return for the tax year or two years after payment of the tax, whichever is later. Thus, the last day for W to claim a credit or refund of the $2,000 amount was May 5, 2013, but her request for relief was not filed until October 3, 2013.

*Example 3.* On June 14, 2011, the IRS offset W's overpayment from her separate Federal income tax return for 2010 against H and W's joint liability for 2009, which was the result of an understatement. On July 5, 2012, the IRS offset H's overpayment from his separate Federal income tax return for 2011 against H and W's joint liability for 2009. The offset is the first collection activity the IRS initiated against H to collect the 2009 joint liability. On November 25, 2013, H requests relief under section 6015 by filing Form 8857. H's request is timely. For purposes of §§ 1.6015–2 and 1.6015–3, the request was filed within two years of the IRS's first collection activity against H. The IRS's collection activity against W does not start the two-year period for H to request relief. Additionally, for purposes of § 1.6015–4, the period of limitation on collection was open when H filed Form 8857, making him eligible for equitable relief from any unpaid liability for 2009, and the period of limitation on a credit or refund of tax for 2009 that was paid through the offset of H's overpayment for 2011 was likewise open when H filed his Form 8857.

*Example 4.* On April 15, 2008, H and W filed a joint Federal income tax return for tax year 2007. On October 1, 2009, additional liability was assessed against H and W as a result of income attributable to H being omitted from the return. H and W divorced soon after and, in late December 2009, W moved out of the family home without notifying the United States Postal Service or the IRS of her change of address until the end of January 2010. On January 15, 2010, the IRS mailed a section 6330 notice regarding H and W's 2007 joint Federal income tax liability to H and W's last known address (the address on H and W's joint Federal income tax return for tax year 2008, filed on April 15, 2009). H and W did not request a CDP hearing in response to the section 6330 notice. The IRS issued a levy on W's wages to W's employer on June 2, 2010. W filed Form 8857 requesting relief under section 6015 on May 15, 2012. Actual receipt of a section 6330 notice is not required to start the two-year period for purposes of § 1.6015–2 or 1.6015–3, as long as the notice is sent to the taxpayer at the taxpayer's last known address by certified or registered mail. The two-year period, therefore, expired on January 15, 2012. Accordingly, W's request for relief is too late to be considered for any relief under § 1.6015–2 or 1.6015–3, as the request was filed more than two years after the IRS sent the section 6330 notice. But because the period of limitation on collection was open (generally until October 1, 2019) when W filed the Form 8857, the IRS will consider whether W is entitled to equitable relief under § 1.6015–4. Further, to the extent W's request for equitable relief under § 1.6015–4 seeks a refund of tax W paid through the levy, W's Form 8857 is a timely claim for refund because it was filed within the applicable period of limitation for credit or refund of tax (in this case, two years from payment of the tax).

*Example 5.* H and W timely filed a joint Federal income tax return for tax year 1999. The IRS selected the 1999 return for examination and determined a deficiency in tax of $10,000. The IRS assessed the tax on December 1, 2001. The taxpayers were divorced in 2005. On her separate Federal income tax return for tax year 2005, W reported an overpayment of $2,500, which the IRS applied on May 3, 2006, to the joint liability for 1999. On her separate Federal income tax return for tax year 2009, W reported an overpayment of $1,750, which the IRS applied on May 15, 2010, to the joint liability for 1999. On May 1, 2012, W filed with the IRS a Form 8857 requesting relief under section 6015. The IRS will not consider whether W is entitled to any relief under § 1.6015–2 or 1.6015–3 because W's election is untimely as W's Form 8857 was filed after the end of the two-year period running from the offset of W's overpayment from her tax year 2005 return. Although the collection period expired on December 1, 2011, the IRS will consider whether W is entitled to equitable relief under § 1.6015–4 for tax year 1999 because W filed Form 8857 within the two-year period for claiming a credit or refund of tax under section 6511(a). Under section 6511(b)(2), the amount of any refund to which W might be entitled is limited to $1,750 (the amount paid within the two years preceding the filing of W's Form 8857), and the $2,500 collected in May 2006 is not available for refund.

*Example 6.* Assume the same facts as in Example 5, except that W's separate Federal income tax return for tax year 2009 did not report an overpayment, and there was no offset against the joint liability for 1999. The IRS will not consider whether W is entitled to any relief under § 1.6015–2 or 1.6015–3 because W's election is untimely as W's Form 8857 was filed after the end of the two-year period running from the offset of W's overpayment from her tax year 2005 return. Further, as the collection period expired on December 1, 2011, and the period for claiming a credit or refund of tax under section 6511(a) expired on May 3, 2008, IRS will not consider whether W is entitled to equitable relief under § 1.6015–4 for tax year 1999.

(6) *Premature requests for relief.* The IRS will not consider for relief under §§ 1.6015–2, 1.6015–3, or 1.6015–4 any election or request for relief from joint and several liability that is premature. A premature election or request for relief is an election or request, other than a request for relief for a liability that is properly reported on a joint Federal income tax return but not paid, that is filed for a tax year prior to the receipt of a notification of an examination or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. These notices or letters do not include notices issued pursuant to section 6223 relating to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) partnership proceedings. A premature request for relief is not considered an election or request under § 1.6015–1(h)(5).

(c) * * *—(1) * * * A requesting spouse who receives a final administrative determination of relief under § 1.6015–1 may not later elect the application of § 1.6015–2 or 1.6015–3, or request equitable relief under § 1.6015–4, including through the CDP hearing procedures under sections 6320 and 6330.

(2) *Reconsideration process.* Pursuant to §§ 1.6015–1(h)(5) and 1.6015–5(c)(1), a requesting spouse is generally entitled to submit only one request for relief and receive only one final administrative determination. Nevertheless, if a requesting spouse submits new information (including new facts, evidence, and arguments not previously considered) to the IRS after the IRS issues a final administrative determination to the requesting spouse, the IRS may reconsider the requesting spouse's request for relief under its established reconsideration process. A

request for a reconsideration is not a qualifying election under § 1.6015–2 or 1.6015–3, or a request under § 1.6015–4, for purposes of § 1.6015–1(h)(5). Any reconsideration of a final administrative determination by the IRS, and any notice or letter issued to the requesting spouse as a result of the reconsideration (such as Letter 4277C, Letter 5186C, Letter 5187C, or Letter 5188C), is not the IRS's final determination for purposes of section 6015(e) and is not subject to review by the Tax Court under section 6015(e) or § 1.6015–7.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

*Example 1.* In January 2008, W became a limited partner in partnership P, and in February 2009, she started her own business from which she earned $100,000 of gross income for the taxable year 2009. H and W filed a joint Federal income tax return for 2009, on which they claimed $20,000 in losses from the investment in P, and they omitted W's self-employment tax. In March 2011, the IRS commenced an examination under the provisions of the Code for TEFRA partnership proceedings and sent H and W a notice of the proceeding under section 6223(a)(1). In September 2011, the IRS opened an examination of H and W's 2009 joint return regarding the omitted self-employment tax. In 2012, H decides to pursue relief under section 6015. H may file a request for relief as to liability for self-employment tax because he has received a notification of an examination informing him of potential liability. A request for relief regarding the TEFRA partnership proceeding, however, is premature under paragraph (b)(6) of this section. H must wait until the IRS sends him a notice of computational adjustment or assesses any liability resulting from the TEFRA partnership proceeding before he may file a request for relief from that liability. An assessment of tax in the TEFRA partnership proceeding would be separate from an assessment for the self-employment tax. Therefore, a subsequent request from H for relief from any liability resulting from the TEFRA partnership proceeding will not be precluded under this paragraph (c) by a previous request that H filed for relief from self-employment tax liability.

*Example 2.* On October 21, 2009, H filed a Form 8857 requesting relief under §§ 1.6015–2, 1.6015–3, and 1.6015–4 for an assessed deficiency relating to his joint income tax return for tax year 2004. On August 11, 2010, the IRS issued a final administrative determination denying H relief from the liability for tax year 2004. Under section 6015(e), H had until November 9, 2010, to file a petition to the Tax Court to challenge the denial of relief. H did not timely file a petition. On October 3, 2011, H submitted information with respect to his claim for relief for tax year 2004 that he did not previously provide. The IRS considered the new information pursuant to its established reconsideration process in IRM 25.15.17 (Rev. 03/08/2013) and informed H on January 25, 2012, via Letter 4277C that he was still not entitled to relief under any subsection of section 6015. Letter 4277C is not a final administrative determination and did not confer any new rights for H to file a petition to the Tax Court to challenge the final administrative determination issued on August 11, 2010, or the denial of relief from the IRS's reconsideration.

■ **Par 6.** Section 1.6015–9 is revised to read as follows:

**§ 1.6015–9 Effective/applicability date.**

(a) *In general.* Except as provided in paragraph (b) of this section, §§ 1.6015–0 through 1.6015–9 are applicable for all elections under § 1.6015–2 or 1.6015–3 or any requests for relief under § 1.6015–4 filed on or after July 18, 2002.

(b) Except for the rules for determining the timeliness of an election under § 1.6015–2 or 1.6015–3, or a request for equitable relief under § 1.6015–4 in paragraphs (b)(1) and (b)(2) of § 1.6015–5, § 1.6015–5 is applicable to any election under § 1.6015–2 or 1.6015–3, or to any request for equitable relief under § 1.6015–4, filed on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules for determining the timeliness of an election under § 1.6015–2 or 1.6015–3, or a request for equitable relief under § 1.6015–4 in paragraphs (b)(1) and (b)(2) of § 1.6015–5 are applicable to any election under § 1.6015–2 or 1.6015–3, or to any request for equitable relief under § 1.6015–4, filed on or after July 25, 2011 (the date that Notice 2011–70, 2011–32 IRB 135, was issued to the public).

**Beth Tucker,**

*Deputy Commissioner for Operations Support.*

[FR Doc. 2013–19502 Filed 8–12–13; 8:45 am]

**BILLING CODE 4830–01–P**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1196

**[Docket No. ATBCB–2013–0003]**

**RIN 3014–AA11**

### Passenger Vessels Accessibility Guidelines

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is extending until January 24, 2014, the comment period for the notice entitled ''Passenger Vessels Accessibility Guidelines,'' that appeared in the **Federal Register** on June 25, 2013. In that notice, the Access Board proposed accessibility guidelines for passenger vessels and requested comments by September 23, 2013. The Access Board is taking this action to allow interested persons additional time to submit comments.

**DATES:** For the proposed rule published June 25, 2013 (78 FR 38102), submit comments by January 24, 2014.

**ADDRESSES:** Submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2013–0003.
- *Email: pvag@access-board.gov.* Include docket number ATBCB–2013–0003 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Paul Beatty, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov* and are available for public viewing.

**FOR FURTHER INFORMATION CONTACT:** Paul Beatty, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone: (202) 272–0012 (voice) or (202) 272–0072 (TTY). Email address: *pvag@access-board.gov.*

**SUPPLEMENTARY INFORMATION:** On June 25, 2013, the Architectural and Transportation Barriers Compliance Board (Access Board) issued proposed accessibility guidelines for the construction and alteration of passenger vessels covered by the Americans with Disabilities Act to ensure that the vessels are readily accessible to and usable by passengers with disabilities. See 78 FR 38102, June 25, 2013. In that notice, the Access Board requested comments by September 23, 2013.

On July 15, 2013, the Cruise Lines International Association requested that the 90-day comment period be extended by an additional 120 days to review and more fully assess the proposed rule. Although the Access Board has already provided a 90-day comment period and has held a public hearing on the proposed rule, the Board will provide additional time for the public to submit comments on this proposed rule. The

new comment period ends on January 24, 2014.

**David M. Capozzi,**

*Executive Director.*

[FR Doc. 2013–19595 Filed 8–12–13; 8:45 am]

**BILLING CODE 8150–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 98

### Child Care and Development Fund (CCDF) Program; Reopening of Comment Period

**AGENCY:** Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Administration for Children and Families within the U.S. Department of Health and Human Services (HHS) is reopening and extending the period to submit comments on the proposed rule for the Child Care and Development Fund (CCDF), published in the **Federal Register** of May 20, 2013. The proposed rule makes changes to the CCDF regulatory provisions in order to strengthen health and safety requirements for child care providers, reflect current State and local practices to improve the quality of child care, infuse new accountability for Federal tax dollars, and leverage the latest knowledge and research in the field of early care and education to better serve low-income children and families.

**DATES:** The comment period for the proposed rule that published May 20, 2013 (78 FR 29441), is reopened. Comments will be received through August 23, 2013. To receive consideration comments must be received no later than 11:59 p.m. E.D.T. on that date.

**ADDRESSES:** You may submit written comments to the following address: Office of Child Care, 370 L'Enfant Promenade SW., Washington, DC 20024, Attention: Cheryl Vincent, Office of Child Care, or electronically via the Internet at: *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Cheryl Vincent, Office of Child Care, 202–205–0750 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

**SUPPLEMENTARY INFORMATION:** HHS published a proposed rule for the Child Care and Development Fund (CCDF) in the **Federal Register** on May 20, 2013 (78 FR 29441) with a deadline for public comments on April 5, 2013 by 11:59 p.m. E.D.T. The Web site for submitting public comments, *http://www.regulations.gov,* experienced technical difficulties and was unavailable for periods of time during the several days prior to this deadline and many commenters reported difficulty submitting their comments using this mechanism. In addition, the site was shut down for maintenance at 6 p.m. E.D.T. on Monday, August 5th shortening the time allowed for submitting public comment. Therefore, HHS is re-opening the comment period for 10 days to ensure all interested parties have an opportunity to submit comment on the proposed rule.

Dated: August 9, 2013.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. 2013–19704 Filed 8–12–13; 8:45 am]

**BILLING CODE 4150–28–P**

# Notices

Federal Register
Vol. 78, No. 156
Tuesday, August 13, 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

### Submission for OMB Review; Comment Request

August 7, 2013.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by September 12, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Agricultural Marketing Service**

*Title:* Livestock, Poultry, Grain and Meat Market News

*OMB Control Number:* 0581–0033

*Summary of Collection:* The Agricultural Marketing Act of 1946, (60 Stat. 1087–1091, as amended: 7 U.S.C. 1621–1627, (AMA) legislates that USDA shall ''collect and disseminate marketing information . . . '' and '' . . . collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on marketing supplies, storage, stocks, quantity, quality, and condition of such products in various positions in the marketing channel, use of such products, and shipments and unloads thereof.'' The mission of Market New is to provide current unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer.

This notice announces the merger of 0581–0005 ''Grain Market News,'' and 0581–0154 ''Livestock and Meat Market News'' into this revised renewal submission of 0581–0033 creating a single collection and re-titled ''Livestock, Poultry, Grain and Meat Market News'' (LPGMN).

*Need and Use of the Information:* Information is used by the private sector to make economic decisions to establish market values for application in contracts or settlement value, and to address specific concerns or issues related to trade agreements and disputes as well as being used by educational institutions, specifically, agricultural colleges and universities. Government agencies such as the Foreign Agricultural Service, Economic Research Service and the National Agricultural Statistics Service use market news data in the performance of their missions. LPGMN reports provide interested segments of the market chain and the general public with unbiased comprehensive livestock, poultry, meat, eggs, wool and grain market data which helps equalize the competitive position of all market participants. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

*Description of Respondents:* Business or other for-profit; Farms

*Number of Respondents:* 2,668

*Frequency of Responses:* Reporting: Weekly; Monthly

*Total Burden Hours:* 14,747

**Agricultural Marketing Service**

*Title:* Livestock Mandatory Reporting Act of 1999

*OMB Control Number:* 0581–0186

*Summary of Collection:* The Livestock Mandatory Reporting Act of 1999 (Pub. L. 106–78; 7 U.S.C. 1635–1636h) mandates the reporting of information on prices and quantities of livestock and livestock products. Under this program, certain livestock packers, livestock product processors and importers meeting certain criteria, including size as measured by annual slaughter are required to report market information to the Agricultural Marketing Service (AMS). The information is necessary for the proper performance of the functions of AMS. USDA's market news provides all market participants, including producers, with the information necessary to make intelligent and informed marketing decisions.

AMS is merging associated burden and form LS–89 approved under information collection 0581–0279, ''Livestock Mandatory Reporting Program, Establishment of the Reporting Regulations for Wholesale Pork'' into the 0581–0186 revised renewal submission.

*Need and Use of the Information:* The information collected and recordkeeping requirements will serve as the basis for livestock and livestock product market news reports utilized by the industry for marketing purposes. The reports are used by other Government agencies to evaluate market conditions and calculate price levels. Economists at major agricultural colleges and universities use the reports to make short and long-term market projections. The information is reported up to three times daily and once weekly

and is only available directly from those entities required to report under the Act.

*Description of Respondents:* Business or other for-profit;

*Number of Respondents:* 422

*Frequency of Responses:* Reporting; Weekly; Other (Daily)

*Total Burden Hours:* 23,766

**Agricultural Marketing Service**

*Title:* Federal-State Marketing Improvement Program (FSMIP)

*OMB Control Number:* 0581–0240

*Summary of Collection:* The Federal-State Marketing Improvement Program (FSMIP) operates pursuant to the authority of the Agricultural Act of 1946 (7 U.S.C. 1621, et.seq.). Section 204(b) authorizes the Secretary of Agriculture to make available funds to State Departments of Agriculture, State bureaus and departments of markets, State agricultural experiment stations, and other appropriate State agencies for cooperative projects in marketing service and in marketing research to effectuate the purposes of title II of the Agricultural Act of 1946. FSMIP provides matching grants on a competitive basis to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system.

*Need and Use of the Information:* The information collection requirements in this request are needed to implement the Federal-State Marketing Improvement Program (FSMIP). The information will be used by the Agricultural Marketing Service (AMS) to establish the entity's eligibility for participation, the suitability of the budget for the proposed project, and compliance with applicable Federal regulations.

*Description of Respondents:* State, Local or Tribal Government

*Number of Respondents:* 80

*Frequency of Responses:* Reporting: Annually; Semi-annually

*Total Burden Hours:* 5,363

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–19504 Filed 8–12–13; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2011–0031]**

### Notice of Decision To Authorize the Importation of Fresh Pitayas and Pomegranates From Mexico Into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our decision to authorize the importation into the continental United States of fresh pitayas and pomegranates from Mexico. Based on the findings of pest risk analyses, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pitayas and pomegranates from Mexico.

**DATES:** As of August 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Marc Phillips, Senior Regulatory Policy Specialist, Regulations, Permits, and Import Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2114.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–58, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice[1] in the **Federal Register** on August 2, 2011 (76 FR 46268–46269, Docket No. APHIS–2011–0031), in which we announced the availability, for review and comment, of PRAs that evaluate the risks associated with the importation into the continental United States of fresh pitayas and pomegranates from Mexico.

We solicited comments on the notice for 60 days ending on October 3, 2011. We received three comments by that date. They were from a State agricultural agency, a foreign trade association, and a foreign governmental organization. The comments are discussed below by topic.

One commenter who opposed the action stated that pitayas and pomegranates from Mexico are hosts for several species of economically important fruit flies, specifically *Anastrepha* species and Mediterranean fruit fly, as well as other surface-feeding arthropods that could be an economic threat to agriculture in the commenter's State. In particular, the commenter stated that irradiation at the proposed absorbed dose of 150 Gy does not fully remove the possible risk of introduction of exotic fruit flies.

Prior to approving the proposed 150 Gy dose, APHIS reviewed scientific evidence on the effectiveness of this dose. The importation of other commodities treated with this dose without the introduction or dissemination of plant pests demonstrates the effectiveness of the proposed 150 Gy dose as a mitigation.

The commenter also stated that the required proposed irradiation does not mitigate the risk of the surface-feeding species of arthropods. The commenter asked that shipments not be permitted entry into his State until the shipping protocol has had sufficient time to demonstrate the effectiveness of the cited mitigation measures.

As noted in the risk management documents (RMDs) for both pitayas and pomegranates, the proposed mitigation for surface feeders on these commodities is not irradiation, but

[1] To view the notice, the PRA, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0031.*

inspection of the commodity by the national plant protection organization (NPPO) of Mexico, with certification that the commodity is free from quarantine pests of concern. Pomegranates and pitayas have been authorized for importation from fruit fly-free areas of Mexico since 1985, and inspectors at U.S. ports of entry have not intercepted these surface-feeding pests on pomegranates or pitayas during their inspections of the fruit. We expect that standard quality control of commercial shipments including culling will remove most of these pests from the commodity.

Some comments were specific to pitayas. Two commenters stated that *Anastrepha fraterculus, Dysmicoccus neobrevipes,* and *Planococcus minor* should be removed from the pest list for pitayas because of insufficient evidence that they are pests of pitayas.

Subsequent to publication of the proposed rule, we established that *P. minor* no longer meets our definition of a quarantine pest and have added it to our list [2] of pests that we no longer regulate. The RMD for pitayas was revised to reflect this.

APHIS has sufficient evidence that *A. fraterculus* has the ability to attack pitayas. Similarly, two separate resources note that *D. neobrevipes,* is present in Mexico and there is evidence that this pest attacks pitayas. Therefore, *Anastrepha fraterculus* and *Dysmicoccus neobrevipes* will remain on the pest list for pitayas from Mexico.

Two commenters noted that *Euschistus servus* is a pest of economic significance in several crops in the United States. The commenters stated that the lack of evidence that this pest is under official control in the United States suggests that *E. servus* does not qualify as a quarantine pest and should be removed from the pitayas pest list.

We agree. *E. servus* is prevalent in at least 14 States in the United States and is not regarded as a quarantine pest. We have removed *E. servus* from the list in the PRA of quarantine pests likely to follow the pathway of pitayas from Mexico. The RMD for pitayas has also been revised to reflect this change.

The commenters also stated that inspection by APHIS at the port of entry should be sufficient mitigation for *Maracayia chlorisalis* because the pest is present in Mexico and APHIS documentation indicates U.S. inspectors have not intercepted this pest over 26 years of imports from various countries.

APHIS agrees that inspection at the port of entry will be sufficient mitigation for *M. chlorisalis.* As noted in our previous notice, shipments of either pitayas or pomegranates from Mexico are subject to inspection at the U.S. ports of entry. The proposed irradiation treatment is a mitigation for the fruit flies associated with pitayas, not *M. chlorisalis.*

The commenters also said that the likelihood of *Milax* species following the pathway of pitayas is low due to the management of the orchards, the post-harvest management of the fruit, and the sensitivity of *Milax* species to the environment.

APHIS agrees that inspection at port of entry is sufficient to mitigate the risk of *Milax* species.

The commenters also noted that, according to International Plant Protection Convention (IPPC) standards, quarantine pests should be identified at the species level.

The commenters are correct. IPPC guidelines state that quarantine pests should be identified at the species level on additional declarations. We have revised the RMDs for both pitayas and pomegranates from Mexico to state that the additional declaration should include a general statement indicating that the consignment was inspected and found free from quarantine pests.

The remaining comments concerned pomegranates. Two commenters said that the following pests should not be considered actionable pests because they are not established in Mexico and are regarded as pests of quarantine significance by Mexico's NPPO: *Aleurodicus disperses, Ceroplastes rubens, Coccus viridis, Maconellicoccus hirsutus,* and *Dysmicoccus neobrevipes.*

Subsequent to publication of the proposed rule, we established that *C. viridis* no longer meets our definition of a quarantine pest and have added it to our list [3] of pests that we no longer regulate. The RMD for pomegranates was revised to reflect this.

The pests *A. disperses, C. rubens, M. hirsutus,* and *D. neobrevipes* are on the regulated pest list for Mexico on the International Plant Protection Convention's Web site. Several resources report the presence of these pests in Mexico, although the specific locations within the country are not indicated. Without survey data, it is impossible to specify the exact areas of distribution for these pests, although APHIS does assume that these pests have a limited distribution in Mexico. Finally, we note these pests occur in a limited portion of the continental United States and are considered quarantine-significant, actionable organisms. We believe it is appropriate that *A. disperses, C. rubens, M. hirsutus,* and *D. neobrevipes* remain on the pest list for pomegranates from Mexico.

The commenters also said that *Siphoninus phillyreae* and *M. hirsutus* do not qualify as quarantine pests because they are present in United States and there is no evidence they are under official control.

*S. phillyreae* and *M. hirsutus* have limited distribution in the United States and are currently considered by our Agency to be quarantine-significant, actionable pests. We continue to consider them likely to follow the pathway and, therefore, will retain them on the pest list for pomegranates.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh pitayas and pomegranates from Mexico subject to the following phytosanitary measures:

- Fresh pitayas and pomegranates may be imported into the continental United States in commercial consignments only.
- The pitayas and pomegranates must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 150 Gy.
- If the irradiation treatment is applied outside the United States, each consignment of fruit must be jointly inspected by APHIS and the NPPO of Mexico and accompanied by a phytosanitary certificate (PC) attesting that the fruit received the required irradiation treatment.
- If the irradiation treatment is applied upon arrival in the United States, each consignment of fruit must be inspected by the NPPO of Mexico prior to departure. For consignments of pitayas, the inspection must include a sampling procedure mutually agreed upon by APHIS and the NPPO of Mexico.
- The PC for consignments of pitayas or pomegranates must also include an additional declaration stating that the consignment was inspected and found free from quarantine pests.
- The commodity is subject to inspection at the U.S. ports of entry.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, pitayas and pomegranates from Mexico will be subject to the general

[2] This list can be viewed at *http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/non-reg-pests.shtml.*

[3] This list can be viewed at *http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/non-reg-pests.shtml.*

requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

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

Done in Washington, DC, this 7th day of August 2013.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–19551 Filed 8–12–13; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Pacific Southwest Recreation Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Pacific Southwest Recreation Resource Advisory Committe will meet in Sacramento, California. The Committee is authorized under the Federal Lands Recreation Enhancement Act (REA) (Pub. L. 108–447) and operates in compliance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II). The purpose of the Committee is to provide advice and recommendations to the Secretary regarding recreation fees on lands and waters managed by the Forest Service and Bureau of Land Management (BLM) in California. The meeting is open to the public. The purpose of the meeting is review and make recommendations on fee proposals from the Forest Service and BLM.

**DATES:** The meeting will be held Thursday, August 29, 2013 from 10:00 a.m. to 1:00 p.m. (PST).

**ADDRESSES:** The meeting will be held at the Federal Building, Room W2620, 2800 Cottage Way, Sacramento, CA. All attendees will need to pass through security and are not allowed to enter building with a phone that has a camera.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Pacific Southwest Regional Office (Region 5), 1323 Club Drive, Vallejo, CA. Please call ahead to Frances Enkoji, at 707–562–8846 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Ramiro Villalvazo, Designated Federal Official, Region 5 Pacific Southwest Regional Office, 707–562–8856, *rvillalvazo@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: Fee proposal for the Arcata Field office of BLM for a Wilderness permit fee and expanded amenity fees within the King Range National Conservation Area. The Committee will also review and make recommendations on the fee proposal to reduce the size of the Lake Isabella recreation fee area and split it into three fee sites, at Auxilary Dam, Old Isabella, and South Fork on the Sequoia National Forest. The agenda and further information can be found at *http://www.fs.usda.gov/main/r5/recreation/racs.*

Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before the meeting. The agenda will include time for people to make oral statements of 3 minutes or less.

Individuals wishing to make oral statements should request in writing by Friday, August 23, 2013, to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ramiro Villalvazo, 1323 Club Drive, Vallejo, CA 94592, or by email to *rvillalvazo@fs.fed.us,* or via facsimile to 707–562–9047. A summary of the meeting will be posted at the Committee's Web site listed above within 21 days of the meeting. If you require sign language interpreting, assistive listening devices or other reasonable accommodation, please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 7, 2013.

**Ramiro Villalvazo,**

*Designated Federal Official, Recreation RRAC.*

[FR Doc. 2013–19536 Filed 8–12–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Processed Products Family of Forms.

*OMB Control Number:* 0648–0018.

*Form Number(s):* 88–13, 88–13c.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 855.

*Average Hours per Response:* Annual survey, 30 minutes; monthly report, 15 minutes.

*Burden Hours:* 455.

*Needs and Uses:* This request is for extension of a current information collection.

NOAA annually collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. NOAA also collects monthly information on the production of fish meal and oil. The information gathered is used by NOAA in the economic and social analyses developed when proposing and evaluating fishery management actions.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually and monthly.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov*.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: August 8, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19570 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–77–2013]**

### Foreign-Trade Zone 84—Houston, Texas; Application for Subzone; Toshiba International Corporation; Houston, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Houston Authority, grantee of FTZ 84, requesting subzone status for the facilities of Toshiba International Corporation located in Houston, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 8, 2013.

The proposed subzone would consist of the following sites: *Site 1* (0.868 acres)—HEV Plant, 13131 West Little York Road, Houston; *Site 2* (2.966 acres)—Warehouse #1, 10510 Okanella Street, Suite 200, Houston; *Site 3* (3.214 acres)—Warehouse #2, 10435 Okanella Street, Houston; and, *Site 4* (2.548 acres)—Warehouse #3, 6355 Clara Road, Suite 100, Houston. A notification of production activity was authorized on June 11, 2013 (B–17–2013).

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 23, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 7, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

**FOR FURTHER INFORMATION CONTACT:** Camille Evans at *Camille.Evans@trade.gov* or at (202) 482–2350.

Dated: August 8, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19598 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–69–2013 and S–70–2013]**

### Approval of Subzone Status; GE Transportation; Lawrence Park Township and Grove City, Pennsylvania

On May 16, 2013, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed applications submitted by the Erie-Western Pennsylvania Port Authority, grantee of FTZ 247, requesting subzone status subject to the existing activation limit of FTZ 247, on behalf of GE Transportation, in Lawrence Park Township and Grove City, Pennsylvania.

The applications were processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 30270–30271, 5–22–2013). The FTZ staff examiner reviewed the applications and determined that they meet the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the applications to establish Subzone 247A in Lawrence Park Township and Subzone 247B in Grove City are approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 247's 530-acre activation limit.

Dated: August 6, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19600 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–29–2013]**

### Foreign-Trade Zone 158—Vicksburg/Jackson, Mississippi; Authorization of Production Activity; Extension of Production Authority; Bauhaus USA, Inc. (Upholstered Furniture); Saltillo, Mississippi

On February 28, 2013, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Bauhaus USA, Inc., in Saltillo, Mississippi.

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 20889, 4–8–2013). 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 and the authority is extended on an indefinite basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and the following restrictions:

1. The annual volume of foreign micro-denier suede upholstery fabric finished with a caustic soda solution that may be admitted to the zone under nonprivileged foreign status (19 CFR 146.42) is limited to 3.5 million square yards.

2. Bauhaus USA, Inc., must admit all foreign upholstery fabrics other than micro-denier suede upholstery fabrics finished with a caustic soda solution to the zone under domestic (duty-paid) status (19 CFR 146.43).

3. Bauhaus USA, Inc., shall submit supplemental annual report data and information for the purpose of monitoring by the FTZ Staff.

Dated: August 7, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19620 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–21–2013]**

### Foreign-Trade Zone 158—Vicksburg/Jackson, Mississippi; Authorization of Production Activity; Extension of Production Authority; H.M. Richards, Inc. (Upholstered Furniture); Guntown, Mississippi

On February 28, 2013, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of H.M. Richards, Inc., in Guntown, Mississippi.

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 20889–20890, 4–8–2013). 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 and the authority is extended on an indefinite basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and the following restrictions:

1. The annual volume of foreign micro-denier suede upholstery fabric finished with a caustic soda solution that may be admitted

to the zone under nonprivileged foreign status (19 CFR 146.42) is limited to 6.5 million square yards.

2. H.M. Richards, Inc., must admit all foreign upholstery fabrics other than micro-denier suede upholstery fabrics finished with a caustic soda solution to the zone under domestic (duty-paid) status (19 CFR 146.43).

3. H.M. Richards, Inc., shall submit supplemental annual report data and information for the purpose of monitoring by the FTZ Staff.

Dated: August 7, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19626 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[B–28–2013]**

### Foreign-Trade Zone 158—Vicksburg/Jackson, Mississippi; Authorization of Production Activity; Extension of Production Authority; Lane Furniture Industries, Inc. (Upholstered Furniture); Belden, Saltillo, and Verona, Mississippi

On February 28, 2013, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Lane Furniture Industries, Inc., in Belden, Saltillo, and Verona, Mississippi.

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 20889, 4–8–2013). 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 and the authority is extended on an indefinite basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and the following restrictions:

1. The annual volume of foreign micro-denier suede upholstery fabric finished with a caustic soda solution that may be admitted to the zone under nonprivileged foreign status (19 CFR 146.42) is limited to 6.5 million square yards.

2. Lane Furniture Industries, Inc., must admit all foreign upholstery fabrics other than micro-denier suede upholstery fabrics finished with a caustic soda solution to the zone under domestic (duty-paid) status (19 CFR 146.43).

3. Lane Furniture Industries, Inc., shall submit supplemental annual report data and information for the purpose of monitoring by the FTZ Staff.

Dated: August 7, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19624 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1910]**

### Reorganization/Expansion of Foreign-Trade Zone 26 (Expansion of Service Area) Under Alternative Site Framework; Atlanta, Georgia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas,* the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, submitted an application to the Board (FTZ Docket B–52–2012, docketed 07–17–12; amended 08–22–12) for authority to expand the service area of the zone to include Columbia County, Georgia, as described in the application, adjacent to the Columbia, South Carolina Customs and Border Protection port of entry;

*Whereas,* notice inviting public comment was given in the **Federal Register** (77 FR 43806, 7–26–12; 77 FR 52310, 8–29–12) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore,* the Board hereby orders:

The application to reorganize FTZ 26 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 2nd day of August 2013.

**Paul Piquado,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19627 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–583–008]**

### Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2012–2013

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 28, 2013, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The period of review (POR) is May 1, 2012, through April 30, 2013, and the review covers six respondents. Based on a withdrawal of the requests for review of certain companies from United States Steel Corporation (Petitioner), we are now rescinding this administrative review with respect to five of those respondents.

**DATES:** *Effective Date:* August 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–1131 or (202) 482–0649, respectively.

### Background

On June 28, 2013, the Department published in the **Federal Register** a notice of initiation of an antidumping duty administrative review of the order on certain circular welded carbon steel pipes and tubes from Taiwan covering the period May 1, 2012, through April 30, 2013.[1] The review covers six companies: Chung Hung Steel Corp., Far East Machinery Co., Ltd., Kao Hsing

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 38924 (June 28, 2013).

Chang Iron & Steel Corp., Shin Yang Steel Co., Ltd., Tension Steel Industries Co., Ltd., and Yieh Phui Enterprise Co., Ltd. Petitioner requested a review of all six companies. Shin Yang Steel Co., Ltd. requested a review of itself.

On July 25, 2013, Petitioner withdrew its request for an administrative review for all of the companies except Shin Yang Steel Co., Ltd.

**Partial Rescission**

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the review, the Secretary will rescind the review. Petitioner withdrew its review request with respect to five companies within the 90-day deadline and, therefore, the withdrawal is timely.

Accordingly, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the following five companies: (1) Chung Hung Steel Corp.; (2) Far East Machinery Co., Ltd.; (3) Kao Hsing Chang Iron & Steel Corp.; (4) Tension Steel Industries Co., Ltd.; and (5) Yieh Phui Enterprise Co., Ltd. This review will continue with respect to Shin Yang Steel Co., Ltd.

**Assessment Instructions**

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

**Notification to Importers**

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.

**Notification Regarding Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition 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: August 7, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–19601 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–819]**

### Certain Pasta From Italy: Preliminary Results of the Countervailing Duty Administrative Review; 2011

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''Department'') is conducting an administrative review of the countervailing duty order on certain pasta from Italy. The period of review (''POR'') is January 1, 2011, through December 31, 2011. We preliminarily determine that Molino e Pastificio Tomasello S.p.A. (''Tomasello'') received countervailable subsidies during the POR, and that Delverde Industrie Alimentari S.p.A. (''Delverde'') and Valdigrano di Flavio Pagani S.r.L. (''Valdigrano'') received *de minimis* countervailable subsidies during the POR. Interested parties are invited to comment on the preliminary results.

**DATES:** *Effective Date:* August 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joseph Shuler or Christopher Siepmann, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1293 and (202) 482–7958, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of the Order**

The scope of the order consists of certain pasta from Italy. The merchandise subject to the order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. A full description of the scope of the order is contained in the ''Decision Memorandum for Preliminary Results of Countervailing Duty Administrative Review: Certain Pasta from Italy,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated August 2, 2013 (''Preliminary Decision Memorandum''), and hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Methodology**

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

In making these findings, we have relied, in part, on an adverse inference in selecting from among the facts otherwise available because the Government of Italy did not act to the best of its ability to respond to the Department's requests for information regarding certain programs. *See* sections 776(a) and (b) of the Act. For further discussion, *see* Preliminary Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences.''

Finally, we were not able to make a preliminary determination of countervailability for certain programs because we require further information. *See* Preliminary Decision Memorandum at ''Programs for Which More Information is Required.'' We intend to seek that information and address those programs in a post-preliminary analysis prior to our final results.

**Preliminary Results of Review**

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for the respondents, Delverde, Tomasello, and Valdigrano. For the period January 1, 2011, through December 31, 2011, we preliminarily find the net subsidy rates for the producers/exporters under review to be as follows:

| Producer/Exporter | Net subsidy rate (percent) |
|---|---|
| Delverde Industrie Alimentari S.p.A. | .42 |
| Molino e Pastificio Tomasello S.p.A. | 1.82 |
| Valdigrano di Flavio Pagani S.r.L. | .35 |

**Assessment Rates**

If these preliminary net subsidy rates are adopted in the final results of the review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties on POR entries in the amounts shown above, except that entries of merchandise produced and exported by Delverde and Valdigrano will be liquidated without regard to countervailing duties because their subsidies are *de minimis.* The Department intends to issue these assessment instructions to CBP 15 days after the date of publication of the final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l., which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2011, and December 31, 2011, at the rates in effect at the time of entry.

**Cash Deposit Requirements**

If the final results remain the same as these preliminary results, the Department will instruct CBP to collect cash deposits on shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review in the amounts shown above, except that cash deposits at zero percent will be required for entries from Delverde and Valdigrano because their rates are *de minimis.*

For non-reviewed companies, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure and Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results not later than ten days after the date of the public announcement of this determination.

Interested parties may submit case and rebuttal briefs, and request a hearing in accordance with 19 CFR 351.309 and 351.310. For a schedule of the deadlines, *see* Preliminary Decision Memorandum.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 2, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix**

**List of Topics Discussed in the Preliminary Decision Memorandum**

Scope of the Order
Use of Facts Otherwise Available and Adverse Inferences
Subsidies Valuation Information
Loan Benchmarks and Discount Rates
Analysis of Programs
I. Programs Preliminarily Determined To Be Countervailable
II. Programs Preliminarily Determined To Be Terminated
III. Programs Preliminarily Determined to be Non-Countervailable
IV. Programs For Which More Information Is Required
V. Programs Preliminarily Found to Be Not Used or that Provided No Benefit During the POR

[FR Doc. 2013–19617 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Management and Oversight of the National Estuarine Research Reserve System

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 15, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Migliori, (301) 563–1126 or *Michael.Migliori@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for extension of a current information collection.

The Coastal Zone Management Act of 1972 (CZMA; 16 U.S.C. 1461 *et seq.*) provides for the designation of estuarine research reserves representative of various regions and estuarine types in the United States to provide opportunities for long-term research, education and interpretation. During the site selection and designation process, information is collected from states in

order to prepare a management plan and environmental impact statement. Designated reserves apply annually for operations funds by submitting a work plan; subsequently progress reports are required every six months for the duration of the award. Each reserve compiles an ecological characterization or site profile to describe the biological and physical environment of the reserve, research to date and research gaps. Reserves revise their management plans every five years. This information is required to ensure that reserves are adhering to regulations and that the reserves are in keeping with the purpose for which they were designated.

**II. Method of Collection**

Respondents have a choice of either electronic or paper submissions. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

**III. Data**

*OMB Control Number:* 0648–0121.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Non-profit institutions; state, local, or tribal government.

*Estimated Number of Respondents:* 75.

*Estimated Time per Response:* Management plan, 1800 hours; site profile, 1800 hours; award application, 8 hours; award reports, 5 hours; designations, 2000 hours; NEPA documentation, 40 hours.

*Estimated Total Annual Burden Hours:* 8,216.

*Estimated Total Annual Cost to Public:* $1,000 in recordkeeping/reporting costs.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 8, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19559 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC791**

### Fisheries in the Western Pacific; Special Coral Reef Ecosystem Fishing Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of environmental assessment; request for comments.

**SUMMARY:** NMFS proposes to issue a Special Coral Reef Ecosystem Fishing Permit that would authorize Kampachi Farms, LLC, to culture and harvest a coral reef ecosystem management unit fish species in a floating pen moored about 5.5 nm off the west coast of the Island of Hawaii in about 6,000 ft of water. This notice informs the public that NMFS prepared a draft environmental assessment (EA) of the potential impacts of the proposed activity.

**DATES:** Comments on the draft EA must be received by September 3, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0125, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0125,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

NMFS prepared a draft EA that describe the potential impacts on the human environment that would result from the proposed activity. The draft EA is available from *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Phyllis Ha, Sustainable Fisheries, NMFS PIR, tel 808–944–2265.

**SUPPLEMENTARY INFORMATION:** NMFS proposes to issue a Special Coral Reef Ecosystem Fishing Permit to Kampachi Farms, LLC, consistent with Federal regulations for Hawaii fisheries at 50 CFR 665.224, pertaining to management of coral reef ecosystem fisheries, and in accordance with the Fishery Ecosystem Plan for the Hawaii Archipelago (FEP). NMFS would authorize Kampachi Farms to culture and harvest the native coral reef ecosystem management unit fish species kampachi (*Seriola rivoliana,* marketed as Kona Kampachi®) using a 132 m^3 (approximately 21 feet in diameter) brass-link mesh aquapod (CuPod) tethered to a moored, 28-ft feed vessel. The feed vessel would be connected to a single-point mooring established at around 6,000 feet deep approximately 5.5 nm west of Keauhou Bay, Hawaii. The Velella array (the name for the combined CuPod and vessel) would be located in Federal waters with the exact position depending on wind and currents. It would not be closer than 3 nm to shore.

A special permit is required because the gear proposed for harvesting a coral reef ecosystem management unit species is not currently identified as an approved gear type under the FEP and fishing regulations. If NMFS permits the activity, the applicant would use the Velella array to grow and harvest 2,000 kampachi fingerlings and juveniles. The stock would be first generation offspring of fish obtained from a local hatchery. If approved, NMFS would authorize the activity for one year.

In this draft EA, information indicates that the low rearing density of fishes, established procedures for application of feed, passive flushing and near constant movement in offshore waters are expected to minimize impacts on water quality. The strong brass mesh net

material is resistant to biofouling and leaching and the CuPod design includes mesh entry panels that prevent fish escapes.

The array's CuPod and vessel would each have a GPS navigation unit to provide location information in the unlikely case of separation from the mooring. In addition to the applicant's monitoring of the array and surrounding waters, the conditions of the NMFS permit would include requirements for avoiding and reporting protected resources interactions, preventing fish escapes and methods of discarding of dead fish, filing harvest and transshipment reports, and accommodating an observer upon request. These operational features, together with the limited scale and duration of the project, resulted in a preliminary determination that the project would have a very limited impact on the environment.

NMFS expects that the array will aggregate pelagic fish. Fishermen would be able to fish around the array. The small size of the array is not expected to have a large adverse impact on catches by other fishermen in the ocean in west Hawaii.

Kampachi Farms must also obtain a Department of the Army permit from the U.S. Army Corps of Engineers for the proposed mooring. NMFS prepared this draft EA with input and review by the U.S. Army Corps of Engineers. When finalized, the EA will serve as the basis for NMFS to determine whether or not the activity would be a major federal action with the potential for significant environmental impacts. If determined to have major impacts, NMFS would need to prepare an environmental impact statement. The EA will also inform NMFS in its decision about whether to issue the special permit. The U.S. Army Corps of Engineers will use this EA to inform the preparation of its own environmental evaluation in accordance with its internal procedures.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 8, 2013.

**Emily H. Menashes,**

*Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–19607 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC804**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its ad hoc Ecosystem Work Group (EWG). A listening station will be available at the Pacific Council offices for interested members of the public.

**DATES:** The conference call will be held Thursday, August 29, 2013, from 12 p.m. to 3 p.m.

**ADDRESSES:** The meeting will be held via conference call, with a public listening station available at the Pacific Council office: 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Gilden, Staff Officer; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the conference call is to consider next steps in protecting unmanaged forage fish, finalize recommendations to the Pacific Council on the Federal list of authorized West Coast Exclusive Economic Zone fisheries, and other items related to the September 2013 Council meeting.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EWG's intent to take final action to address the emergency.

### Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: August 8, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–19566 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC805**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will convene a meeting of the Salmon Technical Team (STT), the Salmon Advisory Subpanel (SAS), and the Model Evaluation Workgroup (MEW) by telephone conference that is open to the public.

**DATES:** The teleconference will be held on Tuesday, September 3, 2013 from 3 p.m. to 5 p.m., or when business for the call is completed.

**ADDRESSES:** A public listening station will be available at the Pacific Council Office, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

**FOR FURTHER INFORMATION CONTACT:** Mike Burner, Staff Officer; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** Please note, this is not a public hearing; it is a work session for the purpose of drafting reports and recommendations for the September 12–17, 2013 Council meeting in Boise, ID. The primary purpose of the meeting is to review information in the Pacific Council's September 2013 meeting briefing book related to salmon and ecosystem-based management, and to develop comments and recommendations for consideration at the September 2013 Pacific Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the group for discussion, those issues may not be the subject of formal SAS, STT, or MEW action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: August 8, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–19567 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Commerce Spectrum Management Advisory Committee Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

**DATES:** The meeting will be held on August 28, 2013, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time.

**ADDRESSES:** The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *spectrumadvisory@ntia.doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/csmac.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *http://www.ntia.doc.gov/other-publication/2013/csmac-2013-charter.* This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/csmac.*

*Matters to Be Considered:* The Committee will receive recommendations from its members on matters related to the accomplishment of the President's goal of identifying 500 megahertz of radio spectrum for wireless broadband by 2020. In addition, the Committee will report out on the recommendations from the following working groups (WGs) established to facilitate collaboration between industry and government stakeholders to develop proposed relocation, transition, and sharing arrangements and plans for the 1755–1850 MHz band:

1. WG3 1755–1850 MHz Satellite Control Links and Electronic Warfare,
2. WG4 1755–1850 MHz Fixed Point-to-Point and Tactical Radio Relay, and
3. WG5 1755–1850 MHz Airborne Operations.

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.doc.gov/category/csmac.*

*Time and Date:* The meeting will be held on August 28, 2013, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

*Place:* The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. 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 Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov,* at least five (5) business days before the meeting.

*Status:* Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of a meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received five (5) business days before the scheduled meeting date, to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in Word or PDF format. CDs should be labeled with the name and organizational affiliation of the filer. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

*Records:* NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/category/csmac.*

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2013–19505 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–60–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–C–2013–0038]**

### Trademark Public Advisory Committee

**AGENCY:** United States Patent and Trademark Office.

**ACTION:** Notice and request for nominations for the Trademark Public Advisory Committee.

**SUMMARY:** On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the ''Act''), Pubic Law 106–113, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the

Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified at 35 U.S.C. 5). The America Invents Act Technical Corrections Act made several amendments to the 1999 Act, including the requirement that the terms of the USPTO Public Advisory Committee members be realigned so that by 2014, December 1 be used as the start and end date, with terms staggered so that each year three existing terms expire and three new terms begin on December 1. Public Law 112–274, Sec. 1(l)(2) (January 14, 2013). Through this Notice, the USPTO is requesting nominations for up to three (3) members of the Trademark Public Advisory Committee for terms of approximately three years that begin on December 6, 2013. There are no vacancies expected on the Patent Public Advisory Committee for December 2013. Accordingly, no nominations are being sought for the Patent Public Advisory Committee at this time.

**DATES:** Nominations must be postmarked or electronically transmitted on or before September 30, 2013.

**ADDRESSES:** Persons wishing to submit nominations should send the nominee's resume to John W. Cabeca, Senior Advisor, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450; by electronic mail to *TPACnominations@uspto.gov;* by facsimile transmission marked to the Senior Advisor's attention at (571) 273–0464; or by mail marked to the Senior Advisor's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** John W. Cabeca, Senior Advisor, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, by facsimile transmission marked to his attention at (571) 273–0464, or by mail marked to his attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450.

**SUPPLEMENTARY INFORMATION:** The Trademark Public Advisory Committee duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to trademarks; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

**Advisory Committee**

The Trademark Public Advisory Committee is composed of nine (9) voting members who are appointed by the Secretary of Commerce (the ''Secretary'') and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Trademark Public Advisory Committee members shall be citizens of the United States and shall represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants. The Committee shall include individuals with ''substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). The Committee also includes three (3) non-voting members representing each labor organization at the USPTO. Administration policy discourages the appointment of federally registered lobbyists to agency advisory boards and commissions (Lobbyists on Agency Boards and Commissions, *http://www.whitehouse.gov/blog/2009/09/23/lobbyist-agency-boards-and-commissions* (Sept. 23, 2009, 2:33PM EST)); cf. Exec. Order No. 13490, 74 FR 4673 (January 21, 2009) (While Executive Order 13490 does not specifically apply to federally registered lobbyists appointed by agency or department heads, it sets forth the Administration's general policy of decreasing the influence of special interests in the Federal Government).

**Procedures and Guidelines of the Trademark Public Advisory Committee**

Each newly appointed member of the Trademark Public Advisory Committee shall serve a term of approximately three (3) years beginning December 6, 2013, and ending on December 1, 2016. *See* AIA Technical Corrections Act, § l(2)(B) (transition to December 1 as start and end date for terms). As required by the 1999 Act, members of the Trademark Public Advisory Committee will receive compensation for each day (including travel time) while the member is attending meetings or engaged in the business of the Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of Title 5, United States Code. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code.

**Applicability of Certain Ethics Laws**

Public Advisory Committee Members shall be Special Government Employees within the meaning of Section 202 of Title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member is required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that came before the member's committee and that involved at least one specific party. 18 U.S.C. 205(c); *see also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

**Meetings of the Trademark Public Advisory Committee**

Meetings of the Trademark Public Advisory Committee will take place at the call of the Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, on-line through the Internet, or by other appropriate means. The meetings of the Advisory Committee will be open to the public except the Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Committee business through the Internet.

**Procedures for Submitting Nominations**

Submit resumés for nomination for the Trademark Public Advisory Committee to: John W. Cabeca, Senior Advisor, Office of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, utilizing the addresses provided above.

Dated: July 23, 2013.

**Teresa Stanek Rea,**

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 2013–19495 Filed 8–12–13; 8:45 am]

**BILLING CODE 3510–16–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its Social Innovation Fund (SIF) Application Instructions. The application instructions will be used by organizations requesting funding for a SIF project.

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 15, 2013.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Social Innovation Fund; Attention Lois Nembhard, Deputy Director, Room 9601; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.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.

**FOR FURTHER INFORMATION CONTACT:** Lois Nembhard, (202) 606–3223, or by email at *innovation@cns.gov.*

**SUPPLEMENTARY INFORMATION:** CNCS is particularly interested in comments that:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

*Background:* This collection will be used by organizations applying to become Social Innovation Fund intermediaries. Applications will be submitted primarily via eGrants.

*Current Action:* This is a new information collection request. SIF previously used the CNCS Universal Application and is now developing more tailored application instructions.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* Social Innovation Fund Application Instructions.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Organizations applying to be Social Innovation Fund intermediaries.

*Total Respondents:* 50.

*Frequency:* Annual.

*Average Time per Response:* Averages 24 hours.

*Estimated Total Burden Hours:* 1,200.

*Total Burden Cost (capital/startup*): None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 8, 2013.

**Lois Nembhard,**

*Deputy Director, Social Innovation Fund.*

[FR Doc. 2013–19604 Filed 8–12–13; 8:45 am]

**BILLING CODE 6050–28–P**

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Meeting

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice of Public Meeting and Hearing.

**SUMMARY:** Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public meeting and hearing described below. The Board invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

**TIME AND DATE OF MEETING:** Session I: 8:00 a.m.–12:00 p.m., October 22, 2013; Session II: 2:00 p.m.–6:00 p.m., October 22, 2013.

**PLACE:** Knoxville Convention Center, 701 Henley Street, Knoxville, Tennessee 37902.

**STATUS:** Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Government in the Sunshine Act and the Board's enabling legislation.

**MATTERS TO BE CONSIDERED:** In Session I of this public meeting and hearing, the Board will receive testimony from the National Nuclear Security Administration (NNSA) and its contractor concerning the safety-related risks associated with continued operation of aging defense nuclear

facilities at the Y–12 National Security Complex. The Board will examine near-term and long-term risk assessment and mitigation efforts, including NNSA's progress since the Board's October 2, 2012, public meeting and hearing concerning improving the integration of safety into the design of the Uranium Capabilities Replacement Project, formerly known as the Uranium Processing Facility Project. In Session II, the Board will discuss Y–12's emergency planning, response, and oversight capabilities for severe events, including the condition and survivability of emergency response facilities. The Board will also discuss the safety of nuclear operations, specifically focused on key safety initiatives to improve conduct of operations and work planning, as well as the importance of robust oversight to sustain long-term improvements.

**CONTACT PERSON FOR FURTHER INFORMATION:** Marcelyn Atwood, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** Public participation in the hearing is invited. The Board is setting aside time at the end of each session of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on October 18, 2013, will be scheduled to speak at the session of the hearing most relevant to their presentations. At the beginning of Session I, the Board will post a schedule for speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC office. The Board will hold the record open until November 22, 2013, for the receipt of additional materials. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: August 8, 2013.

**Peter S. Winokur,**

*Chairman.*

[FR Doc. 2013–19723 Filed 8–9–13; 4:15 pm]

**BILLING CODE 3670–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0075]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; IES Fellows Survey

**AGENCY:** Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before September 12, 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–0075 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:* IES Fellows Survey.

*OMB Control Number:* 1850–0873.

*Type of Review:* Revision of an existing collection of information.

*Respondents/Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 625.

*Total Estimated Number of Annual Burden Hours:* 219.

*Abstract:* The surveys are for predoctoral and postdoctoral fellows taking part in the Institute of Education Sciences three education training grant programs. These programs provide universities support to provide predoctoral training in education research, postdoctoral training in education research, or postdoctoral training in special education research. The results of the survey will be used both to improve the fellowship programs as well as to provide information on the programs to policymakers, practitioners, and the public.

Dated: August 8, 2013.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–19553 Filed 8–12–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Nationwide Categorical Waivers Under the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of Limited Waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Par 20, Par 30 and Par 38 lamps (as specified infra) to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE-Recovery Act Funded State Energy Program (SEP) award.

**FOR FURTHER INFORMATION CONTACT:** Christine Platt-Patrick, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a ''determination of inapplicability'' (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (''nonavailability''). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00–002.01F, dated October 31, 2012. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43–2007 requirements are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE-Recovery Act Funded State Energy Program (SEP) award, qualify for the ''nonavailability'' waiver determination at this time.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver request for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

The specific needs of this project cannot be met by current manufacturers of LED lamps in the United States. However, because of the evolving nature of LED manufacturing, the availability of products is anticipated to increase. As such EERE has chosen to issue a project-specific waiver for the San Antonio River Walk project only. Future requests will be considered on a case-by-case basis.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on February 15, 2013, a nationwide categorical waiver of section 1605 of the Recovery Act was issued for Par 20, Par 30 and Par 38 replacement lamps, that are both rated for outdoor open fixtures exposed to water and closed fixtures with heat concern, are dimmable, and meet ANSI # ANSI ANSLG C78.43–2007 requirements to be utilized in the San Antonio River Walk Project, being performed under a subgrant from an EERE-Recovery Act Funded State Energy Program (SEP) award. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

**Authority:** Pub. L. 111–5, section 1605.

Issued in Washington, DC, on February 15, 2013.

**David T. Danielson,**

*Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

**Editorial Note:** This document was received at the Office of the Federal Register August 8, 2013.

[FR Doc. 2013–19558 Filed 8–12–13; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R04–OAR–2013–0129; FRL–9900–02—Region4]**

### Adequacy Status of the North Carolina Portion of the Charlotte-Gastonia-Rock Hill Bi-State Area Maintenance Plan 8-Hour Ozone Sub-Area Motor Vehicle Emission Budgets for Transportation Conformity Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** EPA is notifying the public that the Agency has determined that the sub-area motor vehicle emissions budgets (MVEBs) for the North Carolina portion of the Charlotte-Gastonia-Rock Hill bi-state area (hereafter referred to as the bi-state Charlotte Area) are adequate for transportation conformity purposes. These MVEBs were submitted by the North Carolina Department of Environment and Natural Resources (NC DENR) as part of the state's 1997 8-Hour Ozone Maintenance plan on November 2, 2011, and later supplemented on February 8, 2013. The bi-state Charlotte moderate 1997 8-hour ozone area is comprised of Charlotte-Gastonia in North Carolina, and Rock Hill (a portion of York County), South Carolina. The North Carolina portion of the bi-state Charlotte Area is comprised of the following sub-areas or counties: Cabarrus, Gaston, partial of Iredell (Davidson and Coddle Creek Townships), Lincoln, Mecklenburg, Rowan, and Union. North Carolina's maintenance plan includes the required MVEBs for volatile organic compounds (VOC) and nitrogen oxides ($NO_X$). This action relates only to the North Carolina portion of the bi-state Charlotte Area. EPA approved MVEBs for South Carolina's portion of York County in a separate action. As a result of EPA's finding, which is being announced in this notice, the North Carolina portion of the bi-state Charlotte Area must use the sub-area MVEBs for future conformity determinations for the 1997 8-hour ozone standard.

**DATES:** These sub-area MVEBs are effective August 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dianna Smith, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303. Ms. Smith can also be reached by telephone at (404) 562–9207, or via electronic mail at *smith.dianna@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.*

**SUPPLEMENTARY INFORMATION:** This notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to NC DENR on July 25, 2013, stating that the sub-area MVEBs identified for the North Carolina portion of the bi-state Charlotte area in the 1997 8-hour ozone maintenance plan, submitted on November 2, 2011, and later supplemented on February 8, 2013, are adequate and must be used for transportation conformity determinations in the North Carolina portion of the bi-state Charlotte Area.

EPA posted the availability of the sub-area MVEBs contained in the North Carolina maintenance plan on EPA's Web site on February 21, 2013, as part of the adequacy process, for the purpose of soliciting comments. During EPA's adequacy comment period from February 21, 2013, through March 25, 2013, no comments, adverse or otherwise, were received on the MVEBs for the North Carolina portion of the bi-state Charlotte Area. Through this notice, EPA is informing the public that these sub-area MVEBs are adequate for transportation conformity. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm.* The adequate sub-area MVEBs are provided in the following table:

CHARLOTTE (NORTH CAROLINA PORTION) 8-HOUR OZONE SUB-AREA MVEB

[Kilograms/day]

| | 2013 | 2025 |
|---|---|---|
| **Cabarrus-Rowan MPO** | | |
| VOC | 10,849 | 6,510 |
| $NO_X$ | 21,822 | 11,953 |
| **Gaston Urban Area MPO/Lake Norman RPO** | | |
| VOC | 11,610 | 7,047 |
| $NO_X$ | 22,168 | 12,541 |
| **Mecklenburg-Union MPO/Rocky River RPO** | | |
| VOC | 28,252 | 17,378 |
| $NO_X$ | 61,501 | 35,728 |

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR Part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a state implementation plan (SIP) means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). EPA has also described the process for determining the adequacy of submitted SIP budgets in a July 1, 2004, final rulemaking entitled, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the maintenance plan for the North Carolina portion of the bi-state Charlotte Area. Even if EPA finds a budget adequate, the maintenance plan submittal could later be disapproved.

Within 24 months from the effective date of this notice, the transportation partners will need to demonstrate conformity to the new MVEBs, if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). *See* 73 FR 4419 (January 24, 2008).

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

Dated: August 5, 2013.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2013–19629 Filed 8–12–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2013–0549; FRL–9846–1]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal); EPA ICR No. 1049.13

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This

ICR is scheduled to expire on March 31, 2014. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before October 15, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2013–0549, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, Mailcode: [2822T], 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center—Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–2013–0549. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Lynn Beasley, Office of Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; email address: *Beasley.lynn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**How can I access the docket and/or submit comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2013–0549, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Superfund Docket is 202–566–0276.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**What information is EPA particularly interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What should I consider when I prepare my comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What information collection activity or ICR does this apply to?**

*Affected entities:* Entities potentially affected by this action are facilities or vessels that manufacture, process, transport, or otherwise use certain specified hazardous substances and oil.

*Title:* Notification of Episodic Releases of Oil and Hazardous Substances (Renewal)

*ICR numbers:* EPA ICR No. 1049.13, OMB Control No. 2050–0046.

*ICR status:* This ICR is currently scheduled to expire on March 31, 2014. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* Section 103(a) of CERCLA, as amended, requires the person in

charge of a facility or vessel to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ) limit. The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 311 of the CWA, as amended, requires the person in charge of a vessel to immediately notify the NRC of an oil spill into U.S. navigable waters if the spill causes a sheen, violates applicable water quality standards, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

The reporting of a hazardous substance release that is at or above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. Likewise, the reporting of oil spills allows the Federal government to determine whether cleaning up the oil spill is necessary to mitigate or prevent damage to public health or welfare or the environment. The hazardous substance and oil release information collected under CERCLA section 103(a) and CWA section 311 also is available to EPA program offices and other Federal agencies that use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. Release notification information, which is stored in the national Emergency Response Notification System (ERNS) data base, is available to state and local government authorities as well as the general public. State and local government authorities and the regulated community use release information for purposes of local emergency response planning. Members of the general public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any are being taken to protect public health and welfare and the environment. ERNS fact sheets, which provide summary and statistical information about hazardous substance and oil release notifications, also are available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 23,864.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 97,842.

*Estimated total annual costs:* $3,319,936. This includes an estimated burden cost of $3,319,936 and an estimated cost of $0 for capital investment or maintenance and operational costs.

**Are there changes in the estimates from the last approval?**

There is a decrease of 8,188 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's expected decrease in the projected number of release notifications per year.

**What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 1, 2013.

**Lawrence M. Stanton,**

*Director, Office of Emergency Management.*

[FR Doc. 2013–19609 Filed 8–12–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Conflict of Interest Waiver

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of waiver of section 4(b) of the Communications Act of 1934.

**SUMMARY:** Notice is hereby given that the Commission granted a waiver of the financial relationship prohibition contained in section 4(b) of the Communications Act of 1924, as amended, 47 U.S.C. 154(b), for Mr. Theodore Marcus, Attorney Advisor, Enforcement Bureau, FCC, to retain time-limited financial interests in AT&T through a last distribution in March 2014 and a reasonable time thereafter for divestiture, not to exceed thirty (30) days. During that period, Mr. Marcus will recuse himself from participation in any matter involving or affecting AT&T in accord with section 208(a) of Title 18 of the United States Code, 18 U.S.C. 208(a), and the Office of Government Ethics implementing regulations, 5 CFR, part 2640.

**DATES:** Effective July 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Carney, Office of General Counsel, (202) 418–1720.

**SUPPLEMENTARY INFORMATION:** This notice is in accord with section 4(b)(2)(B)(ii) of the Communications Act of 1934, as amended. 47 U.S.C. 154(b)(2)(B)(ii).

Federal Communications Commission.

**Patrick J. Carney,**

*Assistant General Counsel and Alternate Designated Agency Ethics Official.*

[FR Doc. 2013–19599 Filed 8–12–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Stanley Dickson, Jr.,* Gross Pointe Park, Michigan, as an individual, and as a member of the group consisting of Steven Dickson, Rancho Santa Fe, California, Kathryn J. Dickson, Howell, Michigan and Riddle Limited Partnership, Howell, Michigan; to acquire voting shares of FNBH Bancorp, Inc., and thereby indirectly acquire voting shares of First National Bank in Howell, both in Howell, Michigan.

Board of Governors of the Federal Reserve System, August 8, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–19539 Filed 8–12–13; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0056; Docket 2012–0076; Sequence 53]**

### Federal Acquisition Regulation; Submission for OMB Review; Report of Shipment

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension with changes to a previously existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning report of shipment. A notice was published in the **Federal Register** at 78 FR 11885, on February 20, 2013. One comment was received.

**DATES:** Submit comments on or before September 12, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0056, Report of Shipment by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0056, Report of Shipment''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0056, Report of Shipment'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. ATTN: Hada Flowers/IC 9000–0056, Report of Shipment.

*Instructions:* Please submit comments only and cite Information Collection 9000–0056, Report of Shipment, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Acquisition Policy, by telephone at (202) 501–1448 or *curtis.glover@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

In accordance with FAR 47.208 and the clause at FAR 52.247–68, Report of Shipment (REPSHIP), military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en-route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. Unless otherwise directed by a contracting officer, a contractor shall send the notice to the consignee transportation office at least twenty-four hours before the arrival of the shipment.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**B. Discussion and Analysis**

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the

information collection would violate the fundamental purpose of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** Notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR 47.208 and the clause at FAR 52.247–68. The purpose of this provision and associated clause is to require contractors to give advance notice to the Government when they are shipping classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. The notice of shipment is relied upon by the Government to prepare for the receipt of supplies or equipment that requires special handling. Not granting this extension would eliminate the Government's ability to receive the supplies or equipment in a timely or efficient manner.

*Comment:* The respondent commented that the agency does not accurately estimate the public burden an extension of the information collection requirement would create.

*Response:* The United States Transportation Command (USTRANSCOM) handles the majority of these types of shipments in the Federal Government. Based on information received from USTRANSCOM, and in consideration of the public comments received, the estimated burden hours were revised upward. The annual respondents are estimated at approximately 33, with the overall number of responses per year right around 10,000. The estimated average number of responses per respondent is 303. These revisions to the information collection result in upward adjustment to the estimated total burden hours from 167 hours to 9,999 hours (see section (C) for detailed analysis).

*Comment:* The respondent commented the collective burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* The Paperwork Reduction Act (PRA) was designed to improve the quality and use of Federal information to strengthen decision making, accountability, and openness in government and society. Central to this process is the solicitation of comments from the public. This process incorporates an enumerated specification of targeted information and provides interested parties a meaningful opportunity for comment on the relevant compliance cost. This process has led to decreases in the overall collective burden of compliance for the information collection requirement in regards to the public. Based on OMB estimates, in FY 2010, the public spent 8.8 billion hours responding to information collections. This was a decrease of one billion hours, or ten percent from the previous fiscal year. In effect, the collective burden of compliance for the public is going down as the Government publishes rules that make the process less complex, more transparent, and reduce the cost of Federal regulations to both the contractor community and Government.

*Comment:* The respondent commented that the Government's response to the Paperwork Reduction Act waiver for Far Case 2007–006 is instructive on the total burden for respondents.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provide by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to sixty. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is warranted at this time.

**C. Annual Reporting Burden**

There is no centralized database in the Federal Government that maintains information regarding the use of FAR 47.208 and the clause at FAR 52.247–68. Therefore, subject matter experts were consulted to obtain additional information that helped in estimating the revised public burden.

Information from the Federal Procurement Data System (FPDS) was not used to gather the data for this information collection, given that agencies are not required to report classified information into FPDS (see FAR 4.603(b)). Based on a review of the applicable clause, it was determined that the types of contracts associated with this information collection are: Contracts that result in the shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, class 1, division 1.1, 1.2 and 1.3; class 2, division 2.3 and class 6, division 6.1;

(C) Radioactive materials requiring the use of a III bar label; or

(D) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic destination (other than a port for export)

Data from Fiscal Year (FY) 2012 was retrieved from the United States Transportation Command's (USTRANSCOM) Defense Transportation Tracking System (DTTS). The primary mission of DTTS is to provide safety, security, and in-transit visibility of all DOD shipments by updating information from its database to USTRANSCOMs Global Transportation Network. USTRANSCOM preformed a comprehensive review to determine the number of contractor shipments that were tracked in FY 2012. Based on information from USTRANSCOM, it was reported that in FY 2012 approximately 10,000 shipments from 33 unique vendors reported the notice of shipment requirement, as identified in FAR 47.208 and the clause at FAR 52.247–68. The subject matter experts

determined that 33 unique vendors was a sufficient baseline for estimating the number of respondents. USTRANSCOM further provided that the number of shipments varied from contractor to contractor, ranging from as few as 11 shipments per contractor at the low end, to over 1900 shipments per contractor at the high end. USTRANSCOM also determined that averaging the number of shipments for FY 2012 (approximately 10,000) by the number of unique vendors (33), was a sufficient baseline, for this estimate, in determining the average number of responses per respondent. Therefore it is estimated that, in accordance FAR 47.208 and the clause at FAR 52.247–68, contractors were required to provide advance notice of shipments en-route to military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities, and those shipments contained classified materials, sensitive, controlled, and/or certain other protected material, explosives, and/or some other hazardous materials, on average 303 times per year. Further, based on information received from USTRANSCOM, the estimated time require to prepare this notification remains at 10 minutes. These revisions represent an increase from the previously approved information collection.

*Respondents:* 33.

*Responses per Respondent:* 303.

*Annual Responses:* 9,999.

*Hours per Response:* .167.

*Total Burden Hours:* 1,670.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: August 8, 2013.

**Karlos Morgan,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–19568 Filed 8–12–13; 8:45 am]

**BILLING CODE 6820–EP–P**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–00XX; Docket No. 2013–0001; Sequence 8]**

### Information Collection; MyUSA

**AGENCY:** Office of Citizen Services and Innovative Technologies (OCSIT), General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding a new information collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding MyUSA.

**DATES:** Submit comments on or before October 15, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 3090–00XX; MyUSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–00XX; MyUSA''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–00XX; MyUSA''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–00XX; MyUSA'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. ATTN: Hada Flowers/IC 3090–00XX; MyUSA.

*Instructions:* Please submit comments only and cite Information Collection 3090–00XX; MyUSA, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Sarah Crane, Director, Office of Citizen Services and Innovative Technologies, General Services Administration, at telephone number 202–208.5855, or via email to *Sarah.Crane@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

MyUSA (*https://my.usa.gov*) provides an account to users that gives them control over their interactions with government agencies and how government uses and accesses their personal information. Users have the option of creating a personal profile that can be reused across government to personalize interactions and streamline common tasks such as filling out forms. Government agencies can build applications that can request permission from the user to access their MyUSA Account and read their personal profile.

The information in the system is contributed voluntarily by the user and cannot be accessed by the government without explicit consent of the user; information is not shared between government agencies, except when the user gives explicit consent to share his or her information, and as detailed in the MyUSA System of Records Notice (*http://www.gpo.gov/fdsys/pkg/FR-2013-07-05/pdf/2013-16124.pdf*).

The information collected is basic profile information, and may include: name, home address, phone number, gender, marital status and basic demographic information such as whether the individual is married, a veteran, a small business owner, a parent or a student.

Use of the system, and contribution of personal information, is completely voluntary.

### B. Public Comments

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

### C. Annual Reporting Burden

*Respondents:* 10,000.
*Responses per Respondent:* 1.
*Total annual responses:* 10,000.
*Hours per Response:* .25.
*Total Burden Hours:* 2,500.
*Obtaining Copies of Proposals:* General Services Administration,

Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, telephone 202–501–4755. ATTN: Hada Flowers/IC 3090–00xx; MyUSA. Please cite OMB Control No. 3090–XXXX; MyUSA, in all correspondence.

Dated: August 8, 2013.

**Casey Coleman,**

*Chief Information Officer.*

[FR Doc. 2013–19633 Filed 8–12–13; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0892]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Communicating Composite Scores in Direct-to-Consumer Advertising

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Communicating Composite Scores in Direct-to-Consumer (DTC) Advertising'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** On May 16, 2013, the Agency submitted a proposed collection of information entitled ''Communicating Composite Scores in Direct-to-Consumer (DTC) Advertising'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0743. The approval expires on July 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 5, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–19523 Filed 8–12–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–0880]**

### Draft Guidance for Industry on Frequently Asked Questions About Medical Foods; Second Edition; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of the draft guidance for industry entitled ''Frequently Asked Questions About Medical Foods; Second Edition.'' The draft guidance, when finalized, will provide responses to additional questions regarding the definition, labeling, and availability of medical foods and updates to some of the existing responses.

**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 the draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 15, 2013.

**ADDRESSES:** Submit written requests for single copies of this draft guidance to the Office of Nutrition, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

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:** Shawne Suggs-Anderson, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1783.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

We are announcing the availability of a draft guidance for industry entitled ''Frequently Asked Questions About Medical Foods; Second Edition.'' This draft guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on medical foods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

We originally issued this guidance in May 2007. This draft guidance provides responses to additional questions regarding the definition, labeling, and availability of medical foods and updates to some of the existing responses.

#### II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information in sections 101.3, 101.4, 101.5, 101.15, and 101.105 of 21 CFR part 101 have been approved under OMB control number 0910–0381.

The labeling provisions recommended in this draft guidance in response to Question 13 are not subject to review by OMB because they do not constitute a ''collection of information'' under the PRA. Rather, the recommended labeling is a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

#### III. Comments

Interested persons may submit either electronic comments regarding this draft guidance to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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 this draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: August 7, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–19532 Filed 8–12–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0001]**

### Pediatric Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Pediatric Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 19, 2013, from 10 a.m. to 5:30 p.m. and September 20, 2013, from 8 a.m. to 1 p.m.

*Location:* Doubletree Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910, 301–589–5200 or visit the hotel's Web site at *http://doubletree3.hilton.com/en/hotels/maryland/doubletree-by-hilton-hotel-washington-dc-silver-spring-DCASSDT/index.html.*

*Contact Person:* Walter Ellenberg, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5154, Silver Spring, MD 20993, 301–796–0885, email *walter.ellenberg@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* On September 19, 2013, and September 20, 2013, the Pediatric Advisory Committee (PAC) will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the for Pediatric Research Equity Act (Pub. L. 108–155).

On September 19, 2013, the PAC will meet to discuss Cervarix (human papillomavirus Bivalent (Types 16 and 18) vaccine); Gammagard Liquid (Immune Globulin Infusion (human)); Hemacord (hematopoietic progenitor cells, cord blood); Copegus and Pegasys (rivabirin and peginterferon alfa-2a); Chantix (varenicline tartrate); Isentress (raltegravir potassium); Intuniv (guanfacine), Topamax (topiramate); Faslodex (fulvestrant); Ixempra Kit (ixabepilone); and Plavix (clopidogrel bisulfate). An update on the drug program for KidNet will be provided. On September 20, 2013, the PAC will meet to discuss the Berlin Heart EXCOR Pediatric Ventricular Assist Device; Melody Transcatheter Pulmonary Heart Valve (TPV); and Elana Surgical Kit (HUD). On September 20, 2013, the committee will also receive and discuss a report on the September 9 and 10, 2013, meeting of the Pediatric Ethics Subcommittee of the PAC concerning their discussion of the ethical issues involved in the development of pediatric medical countermeasures.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 30, 2013. Oral presentations from the public will be scheduled on September 19, 2013, between approximately 11:30 a.m. and 12 noon, and on September 20, 2013, between 10:30 a.m. and 11 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 22, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 26, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Walter Ellenberg at 301–796–0885, email *walter.ellenberg@fda.hhs.gov,* at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 6, 2013.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2013–19522 Filed 8–12–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0001]**

### Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Circulatory System Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 11 and 12, 2013, from 8 a.m. to 6 p.m.

*Location:* Hilton Washington DC North/Gaithersburg, Montgomery Room, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

*Contact Person:* Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3063, *Jamie.Waterhouse@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* On September 11, 2013, during session I, the committee will discuss and make recommendations regarding the proposed classification of external cardiac compressor (ECC) devices, one of the remaining preamendments class III devices regulated under the section 510(k) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360(k)) (510(k)) pathway. ECCs, also known as chest compressors, assist in the act of cardiopulmonary resuscitation (CPR). The devices in this classification are divided into two types: (1) Devices that provide automatic chest compressions at a fixed compression rate and depth (automated ECCs), which are placed directly on the patient's chest and are powered manually, pneumatically, or electrically and (2) devices that aid the emergency medical professional in delivering manual compressions at a compression depth and rate that are consistent with current guidelines (CPR Aids). These devices are placed beneath the hands of the emergency medical professional or in the vicinity of the cardiac arrest victim and provide audio and/or visual feedback to assist emergency personnel in following the recommended steps for CPR and maintaining the recommended rate and depth of compressions for the duration of CPR.

On January 8, 2013 (78 FR 1162), FDA issued a proposed order which, if made final, would make the class III ECC devices class II subject to special controls and, except as noted below, premarket notification (510(k)). The CPR aid device is proposed to be exempt from section 510(k) of the FD&C Act if it is a prescription use device that provides feedback to the rescuer consistent with the current American Heart Association guidelines for CPR and in compliance with the special controls, subject to the limitations of exemptions in 21 CFR 870.9. The regulatory history of ECC devices has been discussed as part of the proposed rule (77 FR 36951, June 20, 2012).

The discussion at the panel meeting will involve making recommendations regarding regulatory classification to either reconfirm to class III (subject to premarket approval application (PMA)) or reclassify to class I or class II. The committee will further be asked to comment on whether general and/or special controls are adequate to assure the safety and effectiveness of the device and whether, if reclassified to class II, these devices should be exempt from premarket notification requirements.

On September 11, 2013, during session II, the committee will discuss and make recommendations regarding classification of external pacemaker pulse generators (EPPGs), one of the remaining preamendments class III devices regulated under the 510(k) pathway. An EPPG is a device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. This device, which is used outside the body, is used as a temporary substitute for the heart's intrinsic pacing system until a permanent pacemaker can be implanted, or to control irregular heartbeats in patients following cardiac surgery or a myocardial infarction. The device may have adjustments for impulse strength, duration, R-wave sensitivity, and other pacing variables.

On October 17, 2011 (76 FR 64224), FDA issued a proposed rule which, if made final, would make the class III external pacemaker pulse generator devices class II subject to premarket notification (510(k)) and special controls. The regulatory history of external pacemaker pulse generator devices has been discussed as part of the proposed rule (77 FR 36951).

The discussion at the panel meeting will involve making recommendations regarding regulatory classification to either reconfirm to class III (subject to PMA) or reclassify to class II and comment on whether special controls are adequate to assure the safety and effectiveness of this device.

Also during session II, FDA will be seeking feedback from the committee regarding classification of triple chamber pacing system analyzers (PSAs) with external pacing capability, a postamendments device classified through the premarket approval process as class III. A triple chamber PSA is intended to be used during the implant procedure of pacemakers and defibrillators, including biventricular devices, to evaluate the placement and integrity of pacing leads for determination of appropriate pacing parameters for the implanted device. The device provides pacing and sensing in up to three chambers during the implant procedure. The discussion at the panel meeting will involve making recommendations regarding regulatory classification to either reconfirm to class III (subject to PMA) or reclassify to class II and comment on whether special controls are adequate to assure the safety and effectiveness of this device.

On September 12, 2013, the committee will discuss and make recommendations regarding the proposed classification of membrane lung for long-term pulmonary support systems, one of the remaining preamendments class III devices regulated under the 510(k) pathway. A membrane lung for long-term pulmonary support refers to the oxygenator component of an extracorporeal circuit used during long-term procedures, commonly referred to as an ECMO. An ECMO procedure provides assisted extracorporeal circulation and physiologic gas exchange of a patient's blood when an acute (reversible) condition prevents the patient's own body from providing the physiologic gas exchange needed to sustain life. The circuit is comprised of multiple device types, including, but not limited to, an oxygenator, blood pump, cannulae, heat exchanger, tubing, filters, monitors/detectors, and other accessories; the circuit components and configuration (e.g., arteriovenous, veno-venous) may differ based on the needs of the individual patient or the condition being treated. ECMO is intended for patients with acute reversible respiratory or cardiac failure,

unresponsive to optimal ventilation and/or pharmacologic management.

On January 8, 2013 (78 FR 1158), FDA issued a proposed order which, if made final, would make the class III ECMO devices class II subject to premarket notification (510(k)) and special controls. The regulatory history of ECMO devices has been discussed as part of the proposed rule (78 FR 1158).

The discussion at the panel meeting will involve making recommendations regarding regulatory classification to either reconfirm to class III (subject to PMA) or reclassify to class II and comment on whether special controls are adequate to assure the safety and effectiveness of this device.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 28, 2013. On September 11, 2013, oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. for session I and between 2 p.m. and 2:30 p.m. for session II. On September 12, 2013, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 20, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 22, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at *Annmarie.Williams@fda.hhs.gov* or 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 7, 2013.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2013–19521 Filed 8–12–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received within 30 days of this notice.

**ADDRESSES:** Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:**

*Information Collection Request Title:* Black Lung Clinics Program Performance Measures OMB No. 0915–0292—Extension.

*Abstract:* The Health Resources and Services Administration, Office of Rural Health Policy (HRSA/ORHP) conducts an annual data collection of user information for the Black Lung Clinic Program, which has been ongoing with OMB approval since 2004. The purpose of the Black Lung Clinic Program is to improve the health status of coal workers by providing services to minimize the effects of respiratory and pulmonary impairments of coal miners, including treatment required in the management of problems associated with black lung disease which improves the miners' quality of life and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases. Collecting this data will provide HRSA information on how well each grantee is meeting the needs of active and retired miners in their communities.

*Need and Proposed Use of the Information:* Data from the annual report will provide quantitative information about the clinics, specifically: (a) The characteristics of the patients they serve (gender, age, disability level, occupation type); (b) the characteristics of services provided (medical encounters, non-medical encounters, benefits counseling, or outreach); and (c) the number of patients served. This assessment will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993. It will also ensure that funds are effectively used to provide services that meet the target population needs. HRSA/ORHP's intent in using the current measures until the next competitive grant cycle (July 2014) is to allow grantees to make adjustments to their data collection/data reporting systems, as well as revise the general program requirements to more closely align with the statute.

**Summary of Prior Comments and Agency Response**

A 60-day **Federal Register** Notice was published in the **Federal Register** on

June 12, 2013, Vol. 78, No. 113; p. 35287. There were two public comments. One of the grantees recommended HRSA/ORHP eliminate the process measures and focus on outcome measures. HRSA is currently working on revising the measures for the entire program, and, as the grantee suggested, is attempting to focus the measures more on outcomes. As noted above, HRSA/ORHP's intent in using the current measures until the next competitive grant cycle (July 2014) is to allow grantees to make adjustments to their data collection/data reporting systems, as well as revise the general program requirements to more closely align with the statute. There will also be another period for the general public to comment on the new measures. Another grantee requested a copy of the measures, seeking clarification on what was being asked. Clarification was provided that none of the measures will be changed this year. The measures have been the same for the last several years.

*Likely Respondents:* Black Lung Clinics Program Grantees.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Name of instrument ..... | Black Lung Clinics Program Measures ..... | 1 | 15 | 10.0 | 150.00 |
| Total ..... | ..... | 1 | 15 | 10.0 | 150.00 |

Dated: August 6, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–19569 Filed 8–12–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* September 5, 2013, 10:00 a.m. to 4:00 p.m. EDT.

*Place:* Audio Conference Call and Adobe Connect Pro.

The ACCV will meet on Thursday, September 5 from 10:00 a.m. to 4:00 p.m. (EDT). The public can join the meeting by:

1. (Audio Portion) Calling the conference Phone Number 800–369–3104 and providing the following information:

*Leaders Name:* Dr. Vito Caserta

*Password:* ACCV

2. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: *https://hrsa.connectsolutions.com/accv/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL:

*https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview.*

Call (301) 443–6634 or send an email to *aherzog@hrsa.gov* if you are having trouble connecting to the meeting site.

*Agenda:* The agenda items for the September meeting will include, but are not limited to, updates from the Division of Vaccine Injury Compensation (DVIC); Department of Justice (DOJ); National Vaccine Program Office (NVPO); Immunization Safety Office (Centers for Disease Control and Prevention); National Institute of Allergy and Infectious Diseases (National Institutes of Health); and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

*Public Comment:* Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857 or email: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by email, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

**FOR FURTHER INFORMATION CONTACT:** Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; Telephone (301) 443–6593 or email: *aherzog@hrsa.gov.*

Dated: August 7, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–19576 Filed 8–12–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Organ Transplantation; Request for Nominations for Voting Members

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Advisory Committee on Organ Transplantation (ACOT). The ACOT was established by the Amended Final Rule of the Organ Procurement and Transplantation Network (OPTN) (42 CFR Part 121) and, in accordance with Public Law 92–463, was chartered on September 1, 2000.

**DATES:** The agency must receive nominations on or before 30 days after date of publication in the **Federal Register.**

**ADDRESSES:** All nominations should be submitted to the Executive Secretary, ACOT, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857. Federal Express, Airborne, UPS, etc., mail delivery should be addressed to Executive Secretary, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, at the above address, or via email to: *PStroup@hrsa.gov* and *PTongele@hrsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Stroup, M.B.A., M.P.A., Executive Secretary, ACOT, at (301) 443–1127 or email *pstroup@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** As provided by 42 CFR 121.12, the Secretary established the ACOT. The ACOT is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The ACOT advises the Secretary on all aspects of organ procurement, allocation, transplantation, and on other such matters that the Secretary determines. One of its principal functions is to advise the Secretary on federal efforts to maximize the number of deceased donor organs made available for transplantation and to support the safety of living organ donation.

The ACOT consists of up to 25 members, who are Special Government Employees, and 5 ex-officio, non-voting members. Members and the Chair shall be appointed by the Secretary from individuals knowledgeable in such fields as deceased and living organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, living organ donors, and family members of deceased and living organ donors. Members shall not serve while they are also serving on the OPTN Board of Directors. To the extent practicable, Committee members should represent minority, gender, and geographic diversity of transplant candidates, transplant recipients, organ donors, and family members served by the OPTN. The ex-officio, non-voting members shall include the Directors of the National Institutes of Health; the Centers for Disease Control and Prevention; the Agency for Healthcare Research and Quality; the Administrator of the Centers for Medicare and Medicaid Services; and the Commissioner of the Food and Drug Administration—or their designees.

Specifically, HRSA is requesting nominations for voting members of the ACOT representing: Health care public policy; transplantation medicine and surgery, including pediatric and heart/lung transplantation; critical care medicine; nursing; epidemiology and applied statistics; immunology; law and bioethics; behavioral sciences; economics and econometrics; organ procurement organizations; transplant candidates/recipients; transplant/donor family members; and living donors. Nominees will be invited to serve up to a 4-year term beginning after January 2014.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with a view to ensuring that the ACOT includes the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the ACOT. Nominations shall state that the nominee is willing to serve as a member of the ACOT and appears to have no conflict of interest that would preclude the ACOT membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the ACOT to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (i.e., what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACOT), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted.

HHS has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

Dated: August 6, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–19574 Filed 8–12–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2013 Funding Opportunity

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of intent to award a single source grant to the Community Anti-Drug Coalitions of America (CADCA).

**SUMMARY:** This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award $1,895,388 (total costs) for up to five years to CADCA for the National Community Anti-Drug Coalition Institute (NCI). This is not a formal request for applications. Assistance will be provided only to CADCA based on the receipt of a satisfactory application that is approved by an independent review group.

*Funding Opportunity Title:* SP–13–009.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 93.276.

**Authority:** Public Law 107–82, section (4)(c), as amended by Public Law 109–469 (21 U.S.C. 1521 note) per the direction of the Office of National Drug Control Policy (ONDCP).

*Justification:* Eligibility for this NCI award is limited to CADCA. The purpose of the NCI is to provide education, training, and technical assistance for coalition leaders and community teams, with an emphasis on the development of coalitions serving economically disadvantaged areas. The NCI will disseminate evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes and bridge the gap between research and practice by translating knowledge from research into practical information.

*Contact:* Cathy Friedman, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1097, Rockville, MD 20857; telephone: (240) 276–2316; email: *cathy.friedman*@samhsa.hhs.gov.

**Cathy J. Friedman,**

*SAMHSA Public Health Analyst.*

[FR Doc. 2013–19533 Filed 8–12–13; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4130–DR: Docket ID FEMA–2013–0001]**

### Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–4130–DR), dated July 18, 2013, and related determinations.

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

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 18, 2013.

Scotland County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–19564 Filed 8–12–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2013–0002: Internal Agency Docket No. FEMA–B–1345]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before November 12, 2013.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1345, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown

on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

| Community | Community map repository address |
|---|---|
| **Yavapai County, Arizona, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata* | |
| Unincorporated Areas of Yavapai County | Yavapai County Flood Control District Office, 500 South Marina Street, Prescott, AZ 86305. |
| **Bolivar County, Mississippi, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata* | |
| City of Cleveland | Public Works Department, 1089 Old Highway 61 North, Cleveland, MS 38732. |
| City of Mound Bayou | City Hall, 106 Green Avenue, Mound Bayou, MS 38762. |
| City of Rosedale | City Hall, 304 Court Street, Rosedale, MS 38769. |
| City of Shaw | City Hall, 101 Faison Street, Shaw, MS 38773. |
| City of Shelby | City Hall, 305 3rd Street, Shelby, MS 38774. |
| Town of Alligator | Town Hall, 13 Lake Street, Alligator, MS 38720. |
| Town of Benoit | Town Hall, 114 West Preston Street, Benoit, MS 38725. |
| Town of Beulah | Town Hall, 109 East Main Street, Beulah, MS 38726. |
| Town of Boyle | Town Hall, 111 T. M. Jones Highway, Boyle, MS 38730. |
| Town of Duncan | Town Hall, 204 West Park South, Duncan, MS 38740. |
| Town of Gunnison | Town Hall, 404 Main Street, Gunnison, MS 38746. |
| Town of Merigold | Town Hall, 107 South Front Street, Merigold, MS 38759. |
| Town of Pace | Town Hall, 333 Jenny Washington Street, Pace, MS 38764. |
| Town of Renova | Town Hall, 5 2nd Street, Renova, MS 38732. |
| Town of Winstonville | Town Hall, 101 Osley Avenue, Winstonville, MS 38781. |
| Unincorporated Areas of Bolivar County | Bolivar County Administrator Office, 200 South Court Street, Cleveland, MS 38732. |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 26, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–19556 Filed 8–12–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2013–0002: Internal Agency Docket No. FEMA–B–1332]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before November 12, 2013.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1332, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

**I. Non-Watershed-Based Studies**

| Community | Community map repository address |
|---|---|
| **Refugio, Texas, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Austwell | City Hall, 108 South Gisler Street, Austwell, TX 77950. |
| City of Bayside | City Hall, 909 1st Street, Bayside, TX 78340. |
| Town of Refugio | Town Hall, 613 Commerce Street, Refugio, TX 78377. |
| Town of Woodsboro | Town Hall, 121 North Wood Avenue, Woodsboro, TX 78393. |
| Unincorporated Areas of Refugio County | Refugio County Courthouse, 808 Commerce Street, Refugio, TX 78377. |
| **City of Poquoson, Virginia (Independent City)** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| City of Poquoson | Building Official's Office, 500 City Hall Avenue, Poquoson, VA 23662. |
| **Gloucester County, Virginia, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| Unincorporated Areas of Gloucester County | Gloucester County Codes Compliance Office, 6582 Main Street, Building 3, Gloucester, VA 23061. |
| **Mathews County, Virginia, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| Unincorporated Areas of Mathews County | Mathews County Building Official's Office, 17 Court Street, Mathews, VA 23109. |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 26, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–19554 Filed 8–12–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–67]**

### 30-Day Notice of Proposed Information Collection: Third-Party Documentation Facsimile Transmittal Form

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* September 12, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 30, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* Third-Party Documentation Facsimile Transmittal Form.

*OMB Approval Number:* 2535–0118.

*Type of Request:* Reinstatement, without change, of previously approved collection for which approval has expired.

*Form Number:* HUD–96011.

*Description of the need for the information and proposed use:* The use of the Third-Party Documentation Facsimile Transmittal Form allows the Department to collect the same information electronically as we would for a paper-based application. It also produces an electronic version of the document that will be matched with the electronic application submitted through grants.gov to HUD.

*Respondents* (describe): State, Local and Tribal Government.

*Estimated Number of Respondents:* 33,000.

*Estimated Number of Responses:* 1.

*Frequency of Response:* Annually.

*Average Hours per Response:* 1.

*Total Estimated Burdens:* 3,300.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: August 8, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–19636 Filed 8–12–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5684–N–05]**

### 60-Day Notice of Proposed Information Collection: Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities

**AGENCY:** Office of Environment and Energy, Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* October 15, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Danielle Schopp, Director, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410–7000. For telephone and email communication, contact Elizabeth Zepeda, Environmental Planning Division, (202) 402–3988 or email: *elizabeth.g.zepeda@hud.gov.* This phone number is not toll-free. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Environmental Compliance Recordkeeping Requirements.

*OMB Approval Number:* 2506–0087.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* HUD–7015.15.

*Description of the need for the information and proposed use:* 24 CFR Part 58, ''Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities'' requires units of general local government receiving HUD assistance to maintain a written environmental review record for all projects receiving HUD funding documenting compliance with the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality, related federal environmental laws, executive orders, and authorities, and Part 58 procedure. When the environmental review record is complete, HUD recipients use HUD–7015.15—''Request for Release of Funds and Certification'' to certify their compliance with all applicable environmental laws and authorities. HUD (or the State for certain State-administered HUD grant programs) approves the certification allowing for the conditionally awarded or formula-allocated funds to be released to the recipient. Various laws that authorize this procedure are listed in 24 CFR 58.1(b).

*Respondents* (i.e. affected public): The respondents are state and local governments receiving HUD funding who are required to submit HUD–7015.15.

ESTIMATION OF THE TOTAL NUMBER OF HOURS TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE AND HOURS OF RESPONSE

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| Total | 18,785 | 1 | 18,785 | .6 | 11,271 | 30 | $338,130 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 6, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs Program.*

[FR Doc. 2013–19642 Filed 8–12–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–FHC–2013–N183; FXFR1334088TWG0W4–123–FF08EACT00]**

### Trinity Adaptive Management Working Group; Public Meeting, Teleconference and Web-Based Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a public meeting, teleconference, and web-based meeting of the Trinity Adaptive Management Working Group (TAMWG).

**DATES:** *Public meeting, Teleconference, and web-based meeting:* Tuesday, September 10, 2013, from 9:30 a.m. to 5 p.m. Pacific time. *Deadlines:* For deadlines and directions on registering to listen to the meeting by phone, listening and viewing on the Internet, and submitting written material, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held at the Weaverville Fire District, 125 Bremer Street, Weaverville, CA 96093. You may participate in person or by teleconference or web-based meeting from your home computer or phone.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth W. Hadley, Redding Electric Utility, 777 Cypress Avenue, Redding, CA 96001; telephone: 530–339–7327; email: *ehadley@reupower.com.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity Adaptive Management Working Group (TAMWG) will hold a meeting.

**Background**

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

**Meeting Agenda**

- Designated Federal Officer (DFO) updates,
- TMC Chair report,
- Executive Director's report,
- Budget update and FY14 TRRP workplan,
- 2013 Fall Flow update and river conditions,
- Update on Science Advisory Board Phase 1 Review Report and Decision Support System implementation,
- Update from TRRP workgroup reorganization, and
- Public Comment.

The final agenda will be posted on the Internet at *http://www.fws.gov/arcata.*

**Public Input**

| If you wish to | You must contact Elizabeth Hadley (**FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| Listen to the teleconference/web-based meeting via telephone or Internet | September 3, 2013. |
| Submit written information or questions for the TAMWG to consider during the teleconference | September 3, 2013. |

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the meeting. Written statements must be received by the date listed in ''Public Input,'' so that the information may be available to the TAMWG for their consideration prior to this teleconference. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the meeting.

**Meeting Minutes**

Summary minutes of the meeting will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 90 days after the meeting, and will be posted on the TAMWG Web site at *http://www.fws.gov/arcata.*

Dated: August 8, 2013.

**Vina N. Frye,**

*Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.*

[FR Doc. 2013–19643 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Announcement of National Geospatial Advisory Committee Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** The National Geospatial Advisory Committee (NGAC) will meet on September 4–5, 2013 at the National Conservation Training Center, 698 Conservation Way, Shepherdstown, WV 25443. The meeting will be held in Room #201 Instructional East. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Leadership Dialogue

—Recent FGDC Activities

—Geospatial Platform

—NSDI Strategic Plan

—3D Elevation Program

—Landsat

—Emerging Geospatial Issues

The meeting will include an opportunity for public comment during the morning of September 5. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance for clearance into the meeting site. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703–648–6283, *amaher@fgdc.gov*). Registrations are due by August 28. While the meeting will be open to the public, registration is required for entrance to the facility, and seating may be limited due to room capacity.

**DATES:** The meeting will be held on September 4 from 8:30 a.m. to 5:00 p.m. and on September 5 from 8:30 a.m. to 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** John Mahoney, U.S. Geological Survey (206–220–4621).

**SUPPLEMENTARY INFORMATION:** Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at *www.fgdc.gov/ngac.*

Dated: August 7, 2013.

**Ivan DeLoatch,**

*Executive Director, Federal Geographic Data Committee.*

[FR Doc. 2013–19494 Filed 8–12–13; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[DR.5B814.IA001213]**

### Renewal of Agency Information Collection for Reporting Systems for Public Law 102–477 Demonstration Project

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the Reporting System for Public Law 102–477 Demonstration Project authorized by OMB Control Number 1076–0135. This information collection expires December 31, 2013.

**DATES:** Submit comments on or before October 15, 2013.

**ADDRESSES:** You may submit comments on the information collection to Jack Stevens, Division Chief, Office of Indian Energy and Economic Development, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., MS–20 SIB, Washington, DC 20240; facsimile: (202) 208–4564; email: *Jack.Stevens@bia.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jack Stevens, (202) 208–6764

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Assistant Secretary—Indian Affairs is seeking renewal of the approval for the information collection conducted under OMB Control Number 1076–0135, Reporting System for Public Law 102–477 Demonstration Project. This information allows the Office of Indian Energy and Economic

Development to document satisfactory compliance with statutory, regulatory, and other requirements of the various integrated programs. Public Law 102–477 authorized tribal governments to integrate federally funded employment, training, and related services and programs into a single, coordinated, comprehensive service delivery plan. Funding agencies include the Department of Labor, and the Department of Health and Human Services. Indian Affairs is statutorily required to serve as the lead agency and provides a single, universal report format for use by tribal governments to report on integrated activities and expenditures. The IEED shares the information collected from these reports with the Department of Labor and the Department of Health and Human Services. There are no forms associated with collection. No third party notification or public disclosure burden is associated with this collection.

**II. Request for Comments**

The Assistant Secretary—Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

**III. Data**

*OMB Control Number:* 1076–0135.

*Title:* Reporting System for Public Law 102–477 Demonstration Project.

*Brief Description of Collection:* Public Law 102–477 authorized tribal governments to integrate federally-funded employment, training and related services programs into a single, coordinated, comprehensive delivery plan. Interior has made available a single universal format for Statistical Reports for tribal governments to report on integrated activities undertaken within their projects, and a single universal format for Financial Reports for tribal governments to report on all project expenditures. Respondents that participate in Temporary Assistance for Needy Families (TANF) must provide additional information on these forms.

*Type of Review:* Extension without change of currently approved collection.

*Respondents:* Indian tribes participating in Public Law 102–477.

*Number of Respondents:* 62 on average.

*Number of Responses:* 62 on average.

*Frequency of Response:* Each respondent must supply the information for the Financial Status Report and Public Law 102–477 Demonstration Project Statistical Report once.

*Estimated Time per Response:* Ranges from 2 to 40 hours.

*Estimated Total Annual Hour Burden:* 3,628 hours.

Dated: August 7, 2013.

**John Ashley,**

*Acting Assistant Director for Information Resources.*

[FR Doc. 2013–19580 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–G1–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[134A2100DD/AAK300000/a0t500000.000000]**

### Chicken Ranch Rancheria—Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12–10–03

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12–10–03. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Chicken Ranch Rancheria. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Chicken Ranch Rancheria. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, which will strengthen the tribal government and improve the delivery of tribal services.

**DATES:** *Effective Date:* This Ordinance is effective August 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916) 978–6067; Fax: (916) 916–6099: or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone (202) 513–7640.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Chicken Ranch Tribal Council adopted this Ordinance by Resolution 12–10–03–03 on October 3, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Chicken Ranch Tribal Council duly adopted the Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12–10–03 by Chicken Ranch Tribal Council Resolution 12–10–03–03 on October 3, 2012.

Dated: August 6, 2013.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

The Chicken Ranch Liquor Licensing Ordinance, Ordinance No. 12–10–03, shall read as follows:

The Tribal Council (''Council'') for the Chicken Ranch Rancheria of Me-wuk Indians of California Tuolumne County California (''Tribe'') does hereby ordain as follows:

*Section 1. Declaration of Findings.* The Council hereby finds as follows:

1. Section 6(i) of the Constitution of the Tribe grants to the Tribal Council the power ''to license and regulate the conduct of all business activities within the Tribal jurisdiction.''

2. The introduction, possession and sale of alcoholic beverages on the Chicken Ranch Rancheria is a matter of special concern to the Tribe.

3. Federal law, as codified in 18 U.S.C. 1161, leaves to tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.

4. Present day circumstances make a complete ban on alcoholic beverages within the Chicken Ranch Rancheria ineffective and unrealistic. At the same time, a need still exists for strict tribal regulation and control over alcoholic beverage distribution.

5. The enactment of a tribal ordinance governing alcoholic beverage sales on the Chicken Ranch Rancheria and providing for the purchase and sale of alcoholic beverages through tribally licensed outlets will increase the ability of the tribal government to control the distribution, sale and possession of liquor on the Chicken Ranch Rancheria, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the tribal government and delivery of tribal governmental services.

*Section 2. Declaration of Policy.* The Council hereby declares that the policy of the Tribe is to eliminate the evils of unlicensed and unlawful manufacture, distribution, and sale of alcoholic beverages on the Chicken Ranch Rancheria and to promote temperance in the use and consumption of alcoholic beverages by increasing tribal control over the possession and distribution of alcoholic beverages on the Reservation in accordance with 18 U.S.C. 1161.

*Section 3. Adoption of Liquor Licensing Ordinance.* Seven (7) new Chapters shall be added to Title 4 of the Chicken Ranch Tribal Code entitled ''Liquor Licensing Ordinance'' and shall provide as follows:

**Liquor Licensing Ordinance**

*Chapters:*

02 General Provisions
04 Definitions
06 Prohibition of the Unlicensed Sale of Liquor on the Reservation
08 Application for License
10 Issuance, Renewal, and Transfer of Licenses
12 Revocation of Licenses
14 Enforcement

**Chapter 02—General Provisions**

*02.010 Short title.* This ordinance shall be known and cited as the ''Chicken Ranch Liquor Licensing Ordinance''.

*02.020 Purpose.* The purpose of this ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Chicken Ranch Rancheria except pursuant to a license issued by the Chicken Ranch Tribal Council under the provisions of this ordinance.

*02.030 Sovereign immunity preserved.* Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Chicken Ranch Rancheria. No officer or employee of the Chicken Ranch Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has an expressed and explicit written authorization from the Chicken Ranch Rancheria Tribal Council.

*02.040 Applicability within the reservation.* This ordinance shall apply to all persons within the jurisdiction of the Chicken Ranch Rancheria consistent with the applicable federal Indian liquor laws.

*02.050 Interpretation and findings.* The Chicken Ranch Tribal Council in the first instance may interpret any ambiguities contained in this ordinance.

*02.060 Conflicting provisions.* Whenever any conflict occurs between the provisions of this ordinance, the provisions of any other ordinance of the Tribe, the stricter of such provisions shall apply.

**Chapter 04—Definitions**

*04.010 Interpretation.* In construing the provisions of this ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

*04.020 Alcohol.* ''Alcohol'' means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

*04.030 Alcoholic beverage.* ''Alcoholic beverage'' includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this ordinance with the term ''liquor''.

*04.040 Beer.* ''Beer'' means any alcoholic beverage obtained by the fermentation of any infusion of decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

*04.050 Distilled spirits.* ''Distilled spirits'' means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

*04.060 Importer.* ''Importer'' means any person who introduces alcohol or alcoholic beverages into the Chicken Ranch Rancheria from outside lands that are outside the jurisdiction of the Rancheria for the purpose of sale or distribution within Rancheria lands, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

*04.070 Liquor License.* ''Liquor license'' means a license issued by the Chicken Ranch Tribal Council under the provisions of this ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within lands of the Chicken Ranch Rancheria consistent with federal law.

*04.080 Manufacturer.* ''Manufacturer'' means any person engaged in the manufacture of alcohol or alcoholic beverages.

*04.090 Person.* ''Person'' means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the businesses of the Tribe. It shall be interchangeable in this ordinance with the term ''seller'' or ''licensee''.

*04.100 Lands within the jurisdiction of the Tribe.* ''Lands within the jurisdiction of the Tribe'' means all lands within the exterior boundaries of the Chicken Ranch Rancheria and all lands held in trust by the United States for the benefit of the Tribe, and such lands as may be acquired in the future by the Tribe, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

*04.110 Sale.* ''Sale'' means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person

to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages, or soliciting or receiving such beverages.

*04.120 Seller.* ''Seller'' means any person who, while within the jurisdiction of the Tribe, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

*04.130 Tribal Council.* ''Tribal Council'' or ''Council'' means the Chicken Ranch Tribal Council.

*04.140 Tribe.* ''Tribe'' means the Chicken Ranch Rancheria, a federally recognized Indian Tribe.

*04.150 Wine.* ''Wine'' means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

**Chapter 06—Prohibition of the Unlicensed Sale of Liquor**

*06.010 Prohibition of the unlicensed sale of liquor.* No person shall import for sale, manufacture, distribute or sell any alcoholic beverages within lands under the jurisdiction of the Tribe without first applying for and obtaining a written license from the Tribal Council issued in accordance with the provisions of this ordinance.

*06.020 Authorization to sell liquor.* Any person applying for and obtaining a liquor license under the provision of this ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

*06.030 Types of licenses.* The Council shall have the authority to issue the following types of liquor licenses for the sale of alcoholic beverages on lands within the jurisdiction of the Tribe:

A. ''Retail on-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. ''Retail on-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. ''Retail off-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. ''Retail off-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

E. ''Manufacturers license'' means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the lands within the jurisdiction of the Tribe.

**Chapter 08—Applications for Licenses**

*08.010 Application form and content.* An application for a license shall be made to the Council and shall contain the following information:

A. The name and address of the applicant. In the case of a corporation, the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership the name and address of each partner.

B. The specific area, location and/or premises for which the license is applied for.

C. The type of liquor transaction applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner. In the case of a corporation or Indian Tribe, including the Tribe, the signature and fingerprint of each of the officers of the corporation or Tribe under the seal of the corporation or attestation of the Tribal Secretary.

G. The application shall be verified under oath, notarized and accompanied by the licensed fee required by this ordinance.

*08.020 Fee accompanying application.* The Council shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

A. Retail on-sale general license;

B. Retail on-sale beer and wine license;

C. Retail off-sale general license;

D. Retail off-sale beer and wine liquor; and

E. Manufacturers license.

*08.030 Investigation; denial of application.* Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The Council shall deny an application for issuance, renewal or transfer of a license if either the applicant or the premises for which a license is applied for do not qualify for a license under this ordinance or if the applicant has misrepresented any facts in the application or given any false information to the Council in order to obtain a license.

The Council further may deny any application for issuance, renewal or transfer of a license if the Council finds that the issuance of such a license would tend to create a law enforcement problem, or if issuance of said license would not be in the best interests of the Tribe.

**Chapter 10—Issuance, Renewal and Transfer of Licenses**

*10.010 Public hearing.* Upon receipt of an application for issuance, renewal or transfer of a license, and the payment of all fees required under this ordinance, the Secretary of the Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten (10) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on any lands subject to the jurisdiction of the Tribe. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Council shall hear from any person who wishes to speak for or against the application. The Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony. Notwithstanding any other provision of this Ordinance to the contrary, nothing in this Ordinance shall require the Secretary to publish notice of any hearing held under this Section 10.010, if the hearing is for a temporary event and notice is posted at the Tribal Administrative Offices and Casino at a location visible to the public.

*10.020 Council action on the application.* Within thirty (30) days of the conclusion of the public hearing, the Council shall act on the matter. The Council shall have the authority to deny, approve, or approve with conditions, the application. Before approving the application, the Council shall find: (1) That the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses, and (2) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Ordinance.

Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by the Council by resolution. All businesses shall post their tribal liquor licenses issued under this ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

*10.030 Multiple locations.* Each license shall be issued to a specific person. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

*10.040 Term of license. Temporary licenses.* All licenses issued by the Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Council may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, special events, or similar occasion at a fee to be established by the Council by resolution.

*10.050 Transfer of licenses.* Each license issued or renewed under this ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Council. The Council shall have the authority to approve, deny or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 08.010 of this ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

**Chapter 12—Revocation of Licenses**

*12.010 Revocation of license.* The Council shall revoke a license upon any of the following grounds:

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal or transfer thereof.

B. The violation of any condition imposed by the Council on the issuance, transfer or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal, tribal, or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal ordinance of the Tribe.

E. The failure to take reasonable steps to correct objectionable conditions on the licensed premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of a notice to make such corrections has been received from the Council or its authorized representative.

*12.020 Accusations.* The Council, on its own motion through the adoption of an appropriate resolution meeting the requirements of this section, or any person may initiate revocation proceedings by filing an accusation with the Secretary of the Council. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this ordinance which would authorize the Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of an accusation, the Secretary of the Council shall cause the matter to be set for a hearing before the Council. Thirty (30) days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Council. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten (10) days prior to the hearing date.

*12.030 Hearing.* Any hearing held on any accusation shall be held before a majority of the Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Council. The Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Council shall be final and non-appealable.

**Chapter 14—Enforcement**

*14.010 General penalties.* Any person adjudged to be in violation of this ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each such violation. The Council may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed under a separate ordinance adopted by the Council.

*14.020 Initiation of action.* Any violation of this ordinance shall constitute a public nuisance. The Council may initiate and maintain an action in any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this ordinance.

*Section 4. Severability.* If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and affect. To this end the provisions of this ordinance are severable.

*Section 5. Effective Date.* This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

[FR Doc. 2013–19562 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–4J–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY–957400–13–L16100000–BJ0000]**

### Filing of Plats of Survey, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) is scheduled to file the plats of survey of the land described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

**SUPPLEMENTARY INFORMATION:** The following surveys were executed at the request of the Bureau of Land Management:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 11, the survey of a portion of the subdivision of section 11, and the metes and bounds surveys of Lot 3, section 10, and Lot 15, section 11, Township 51 North, Range 97 West, Sixth Principal Meridian, Wyoming, Group No. 875, was accepted August 7, 2013.

The plat representing the entire record of the dependent resurvey of a portion of the subdivision of section 15, and the metes and bounds survey of Lot 2, section 15, Township 12 North, Range 90 West, Sixth Principal Meridian, Wyoming, Group No. 883, was accepted August 7, 2013.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: August 7, 2013.

**John P. Lee,**

*Chief Cadastral Surveyor, Division of Support Services.*

[FR Doc. 2013–19646 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2013–0007; MMAA104000]**

### Environmental Assessment for Potential Lease Issuance and Marine Hydrokinetic Technology Testing Offshore Florida

**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 environmental impacts and socioeconomic effects of issuing a lease in Official Protraction Diagram NG 17–06, Blocks 7003, 7053, and 7054, offshore Florida. The proposed lease would authorize technology testing activities, including the installation, operation, relocation, and decommissioning of technology testing facilities within the lease area, such as deployment of technology demonstration devices, single anchor moorings, and mooring telemetry buoys. As a result of the analysis in the revised EA, BOEM issued a Finding of No Significant Impact (FONSI). The FONSI concluded that the environmental 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 EA and FONSI, which can be accessed online at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Florida.aspx.*

**Authority:** This notice of availability (NOA) of an EA and FONSI 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 May 24, 2011, BOEM published a Notice of Intent (NOI) to prepare an EA that requested public comments on alternatives for consideration in the EA, as well as identification of important environmental issues associated with data collection and technology testing activities (76 FR 30184). BOEM considered these public comments in drafting the alternatives and assessing the reasonably foreseeable environmental impacts associated with each. Comments received in response to the NOI can be viewed at: *http://www.regulations.gov* by searching for Docket ID BOEM–2011–0012.

On April 25, 2012, BOEM released an EA for a 30-day public review (77 FR 24734). During the comment period, BOEM held a public information meeting in Fort Lauderdale, Florida on May 9, 2012, to provide stakeholders an additional opportunity to offer comments on the EA. After the comment period closed, Florida Atlantic University Southeast National Marine Renewable Energy Center proposed to also conduct ocean current turbine tow tests concurrent with survey activities. To address the comments received and consider additional activities associated with the proposed action, BOEM revised the EA. All comments received in response to the April 25, 2012, NOA can be viewed at: *http://www.regulations.gov* by searching for Docket ID BOEM–2012–0011.

Dated: August 6, 2013.

**Tommy P. Beaudreau,**

*Director, Bureau of Ocean Energy Management.*

[FR Doc. 2013–19593 Filed 8–12–13; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Docket No 2971]**

### Certain Flash Memory Chips and Products Containing the Same Correction to Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Correction is made to named-respondent Macronix International Co., Ltd. of Taiwan.

**SUPPLEMENTARY INFORMATION:** The U.S. International Trade Commission published a notice (78 FR 48188, August 7, 2013) of receipt of complaint entitled, *Certain Flash Memory Chips and Products Containing the Same,* DN 2971; the Commission solicited comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)). The complaint named as respondents Macronix International Co., Ltd. of Taiwan; Macronix America, Inc. of CA; Macronix Asia Limited of Japan; Macronix (Hong Kong) Co., Ltd. of Hong Kong; Acer Inc. of Taiwan; Acer America Corporation of CA; ASUSTek Computer Inc. of Taiwan; Asus Computer International of CA; Belkin International, .Inc. of CA; D-Link Corporation of Taiwan; D-Link System, Inc. of CA; Netgear Inc. of CA; Nintendo Co., Ltd. of Japan; and Nintendo of America, Inc. of WA.

Issued: August 7, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–19501 Filed 8–12–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–13–018]**

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission

**TIME AND DATE:** August 16, 2013 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–499–500 and 731–TA–1215–1223 (Preliminary) (Certain Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam). The Commission is currently scheduled to complete and file its determinations on or before August 16, 2013; views of the Commission are currently scheduled to be completed and filed on or before August 23, 2013.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 8, 2013.
By order of the Commission.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2013–19689 Filed 8–9–13; 11:15 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1121–NEW]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Geospatial Capabilities Survey

**ACTION:** 60-day notice.

The Department of Justice (DOJ), National Institute of Justice (NIJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 15, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Joel Hunt at 202–616–8111.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Establishment survey and initial approval of collection.

(2) *Title of Form/Collection:* Geospatial Capabilities Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies with 100 or more sworn officers. These law enforcement agencies include police departments, sheriff agencies, and state police agencies. This collection is the only effort that provides an ability to determine, in detail, the geospatial tools, techniques, and practices in use currently at large law enforcement agencies. The results of the survey will help NIJ determine how best it can meet the needs and enhance the effectiveness of geospatial capabilities among crime analysts in large police departments through future technology development grants. There is little data on the specific geospatial capabilities of law enforcement agencies and hence little data on which to base technology grant decisions to enhance crime analysis tools and techniques. This survey is will update the information gathered in the Use of Computerized Crime Mapping Survey conducted by NIJ in 1997, the last survey on use of computerized crime analysis tools by NIJ and establish the basis for future technology development funding. This collection will also enable Federal, State, and local law enforcement agencies; legislators; researchers; and government agencies to understand the depth, range, and scope of geospatial capabilities currently in use at large law enforcement agencies and develop approaches to extend and enhance these capabilities towards improving policing strategies and public safety through crime solving and prevention.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The survey will invite all of the 907 law enforcement agencies with 100 or more sworn officers to participate in the survey. The law enforcement agencies will select the personnel most fitting to their organization to provide the responses. The survey is estimated to take one hour to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 907 total burden hours associated with this collection.

*If additional information is required contact:* Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: August 8, 2013.

**Jerri Murray,**

*Department Clearance Officer for PR, U.S. Department of Justice.*

[FR Doc. 2013–19549 Filed 8–12–13; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0017]**

### Agency Information Collection Activities; Extension of a Currently Approved Collection: Semi-Annual Progress Report for the Technical Assistance Program

**ACTION:** 60-Day notice.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for Asixty days@ until October 15, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please Cathy Poston, Office on Violence Against Women, at 202–514–5430.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Semi-annual Progress Report for the Technical Assistance Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0017. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the 100 programs providing technical assistance as recipients under the Technical Assistance Program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the 100 respondents (Technical Assistance providers) approximately one hour to complete a semi-annual progress report twice a year. The semi-annual progress report for the Technical Assistance Program is divided into sections that pertain to the different types of activities in which Technical Assistance Providers are engaged. The primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and their subgrantees to enhance the success of local projects they are implementing with VAWA grant funds. In addition, OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence, and stalking and to foster partnerships between organizations that have not traditionally worked together to address violence against women, such as faith- and community-based organizations.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the semi-annual progress report form is 200 hours. It will take approximately one hour for the grantees to complete the form twice a year.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: August 8, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013–19552 Filed 8–12–13; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree under the Clean Air Act

On August 7, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of New York in the lawsuit entitled *United States* v. *E.I. Dupont de Nemours* 1:13–cv–00810–WMS.

The Consent Decree resolves the claims of the United States set forth in the complaint against E.I Dupont De Nemours and Company for violations of the Clean Air Act (''CAA'') 42 U.S.C. 7401 *et seq.,* and the Emergency Planning and Community Right to Know Act (''EPCRA'') 42 U.S.C. 11001 *et seq.,* in connection with its facility located in Tonawanda, New York. Under the Consent Decree, the settling defendant agrees to pay a civil penalty of $440,000. In addition, the settling defendant agrees to perform certain injunctive relief.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *E.I. duPont de Nemours and Company.* D.J. Ref. No. 90–5–2–1–09450. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By e-mail .... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree

Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

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**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–19507 Filed 8–12–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

### Record of Vote of Meeting Closure

(Pub. L. 94–409) (5 U.S.C. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:00 a.m., on Thursday, August 8, 2013, at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss original jurisdiction cases pursuant to 28 CFR 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Jr., Cranston J. Mitchell, Patricia K. Cushwa, J. Patricia Wilson Smoot and Charles T. Massarone.

*In witness whereof,* I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: August 9, 2013.

**Isaac Fulwood, Jr.,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2013–19718 Filed 8–9–13; 4:15 pm]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,286]**

### Oshkosh Defense, a Division of Oshkosh Corporation, Including On-Site Leased Workers From Acountemps, Advantage Federal Resourcing, Aerotek, Cadre, Dyncorp International, EDCi IT Services, LLC, Landmark Staffing Resources, Inc., Larsen and Toubro Limited, MRI Network/Manta Resources, Inc., Omni Resources, Premier Temporary Staffing, Retzlaff Parts and Repair, Roman Engineering, Straight Shot Express, Inc., Teksystems, and Labor Ready, Oshkosh, Wisconsin; Notice of Negative Determination on Reconsideration

On April 29, 2013, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Oshkosh Defense, a division of Oshkosh Corporation, Oshkosh, Wisconsin (hereafter referred to as ''Oshkosh Defense'' or ''the subject firm''). Workers at the subject firm were engaged in activities related to the production of, and administrative functions in support of, military, logistical, and tactical vehicles, and diverse products for airport products and commercial group (i.e., H-Broom, H-Blower, H-Tractor, P-Series Snow Removal Vehicle, S-Series Front Discharge Cement Mixers and AARF axles), including component parts. The workers are not separately identifiable by article produced. The subject worker group includes workers at various facilities in Oshkosh, Wisconsin who are engaged in production of, and administrative functions in support of, the articles produced by the subject firm.

The subject worker group also includes on-site leased workers from Acountemps, Advantage Federal Resourcing, Aerotek, Cadre, Dyncorp International, EDCi IT Services, LLC, Landmark Staffing Resources, Inc., Larsen and Toubro Limited, MRI Network/Manta Resources, Inc., Omni Resources, Premier Temporary Staffing, Retzlaff Parts and Repair, Roman Engineering, Straight Shot Express, Inc., Teksystems, and Labor Ready.

The petitioner alleges that workers were impacted by increased imports of component parts like or directly competitive with those produced at the Oshkosh, Wisconsin facility.

The initial investigation resulted in a negative determination based on the Department's findings that the subject firm did not import like or directly competitive articles, and did not import finished articles using like or directly competitive foreign-produced component parts.

With respect to Section 222(a)(2)(B) of the Act, the investigation revealed that Oshkosh Defense did not shift the production of military, logistical, and tactical vehicles, or like or directly competitive articles, to a foreign country or acquire the production of such articles from a foreign country.

With respect to Section 222(b)(2) of the Act, the investigation revealed that Oshkosh Defense is not a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

Finally, the group eligibility requirements under Section 222(e) of the Act, have not been satisfied because the workers' firm has not been publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

In the request for reconsideration, the petitioner alleged that the Department has issued a determination for a worker group other than the one identified by the United Auto Workers, Local 578 (UAW–578) in its petition. Specifically, UAW–578 asserts that the subject firm is Oshkosh Corporation and that it has a collective bargaining agreement with Oshkosh Corporation. UAW–578 also alleges that the Department has misunderstood the articles produced at the subject facility. Specifically, UAW–578 asserts that the subject facility produces articles for both military and commercial use. UAW–578 further alleges that an article or a component part for military use is like or directly competitive with the same one for commercial use.

During the reconsideration investigation, the subject firm company official confirmed that, in addition to the production of, and administrative functions in support of military, logistical, and tactical vehicles, the workers of the subject firm also produced diverse products for airport products and commercial group (i.e., H-Broom, H-Blower, H-Tractor, P-Series Snow Removal Vehicle, S-Series Front Discharge Cement Mixers and AARF axles).

The reconsideration investigation also revealed that ''Oshkosh Defense'' is the only division within Winnebago county

that UAW–578 represents and that ''Oshkosh Defense'' is the only entity related to Oshkosh Corporation that employs members of UAW–578. Further, the reconsideration investigation revealed that the ''access equipment'' and ''fire and emergency'' unit have not in the past or present been located in the Oshkosh, Wisconsin area, and that these articles are produced in other parts of the country.

The reconsideration investigation further revealed that the subject firm has not imported any articles or services like or directly competitive with the production of, and administrative functions in support of military, logistical, and tactical vehicles, and diverse products for airport products and commercial group (i.e., H-Broom, H-Blower, H-Tractor, P-series Snow Removal Vehicle, S-Series Front Discharge Cement Mixers and AARF axles) produced or performed by the workers of the subject firm.

The reconsideration investigation also revealed that the subject firm does not import any finished products that incorporate an article or services like or directly competitive with the articles produced or services supplied by the subject firm. Because almost all of the products manufactured by Oshkosh Defense are supplied to the United States military, no customer survey of imports was conducted.

In addition, the reconsideration investigation revealed that the subject firm did not shift production or services like or directly competitive with the administrative services and military, logistical, and tactical vehicles, and diverse products for airport products and commercial group (i.e., H-Broom, H-Blower, H-Tractor, P-Series Snow Removal Vehicle, S-Series Front Discharge Cement Mixers and AARF axles) produced or supplied by the workers of the subject firm, and did not acquire articles or services like or directly competitive with the administrative services and military, logistical, and tactical vehicles, and diverse products for airport products and commercial group (i.e., H-Broom, H-Blower, H-Tractor, P-Series Snow Removal Vehicle, S-Series Front Discharge Cement Mixers and AARF axles) from a foreign country.

During the reconsideration investigation, the subject firm addressed a newspaper article submitted by the petitioner which stated, in part, that Oshkosh Corporation was ''bringing work back to the factory that was outsourced—a move that saved 165 production jobs.'' Specifically, the subject firm confirmed that when production needs extended capacity, the work was ''outsourced'' to local (domestic) vendors.

The Department notes that the forementioned article started with the statement ''Faced with deep cuts in U.S. military spending, and the end of the wars in Iraq and Afghanistan, Oshkosh Corp. is laying off 900 employees in its defense division'' and stated that the ''Department of Defense is reining in spending.'' The article also states that the subject firm has facilities in other states that are able to produce similar or directly competitive articles.

During the reconsideration investigation, the subject firm also addressed the petitioner's allegation that Oshkosh Corporation imports specific parts (i.e., ''exhibit f''). The subject firm confirmed that the parts at issue have never been manufactured by an Oshkosh Defense facility and have always been procured from a foreign country. The subject firm also confirmed that the imported parts are in articles that constitute a negligible percentage of Oshkosh Corporation production.

With respect to Section 222(b)(2) of the Act, the reconsideration investigation confirmed that Oshkosh Defense is not a Supplier or Downstream Producer to a firm (or subdivision, whichever is applicable) that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

## Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, affirm the denial of the petition for group eligibility of Oshkosh Defense, a division of Oshkosh Corporation, Oshkosh, Wisconsin, to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC on this 26th day of July, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19544 Filed 8–12–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,045]**

### Dow Jones & Company, Inc., Dow Jones Content Services Division, Including a Worker of Factiva, Inc., A Subsidiary of Dow Jones Coporation and On-Site Leased Workers From Aerotek, Inc. and Princeton, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 26, 2012, applicable to workers of Aerotek, Inc., working on-site at Dow Jones Corporation, Princeton, New Jersey. The Department's notice of determination was published in the **Federal Register** on July 16, 2012 (FR Volume 77, Pages 41807–41808).

At the request of an American Job Center in Michigan, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of digital newsletters.

The American Job Center reports that the worker group should include a worker of Factiva, Inc., a subsidiary of Dow Jones Corporation who worked from home in Michigan and reported to the Princeton, New Jersey facility.

The amended notice applicable to TA–W–81,045 is hereby issued as follows:

All workers of Dow Jones & Company, Inc., Dow Jones Content Services Division, including a worker of Factiva, Inc., a subsidiary of Dow Jones Corporation, and on-site leased workers from Aerotek, Inc., Princeton, New Jersey (TA–W–81,045) and Generate, Inc., a subsidiary of Dow Jones & Company, Inc., Boston, Massachusetts (TA–W–81,045A) who became totally or partially separated from employment on or after February 13, 2010, through January 26, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 31st day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19545 Filed 8–12–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,473; TA–W–82,473A]**

### Northshore Mining Company, a Subsidiary of Cliffs Natural Resources, Including On-Site Leased Workers From Vanhouse, Express Employment and Our Gang Staffing Silver Bay, Minnesota; Northshore Mining Company, a Subsidiary of Cliffs Natural Resources, Including On-Site Leased Workers From Vanhouse, Express Employment and Our Gang Staffing Babbitt, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 2013, applicable to workers of Northshore Miming Company, a subsidiary of Cliffs Natural Resources, including on-site leased workers from VanHouse and Express Employment, Silver Bay, Minnesota. The workers are engaged in activities related to the mining of iron ore and production of taconite pellets used to make steel. The notice was published in the **Federal Register** on April 1, 2013 (78 FR 19532).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. New information from the company shows that workers at the Babbitt, Minnesota location mine iron ore which is then sent to the Silver Bay, Minnesota facility for processing into taconite pellets. The Silver Bay, Minnesota and the Babbitt, Minnesota locations experienced worker separations during the relevant time period due to a shift in the production of taconite pellets to a foreign country. Information also shows that workers leased from Our Gang Staffing were employed on-site at the Silver Bay, Minnesota and Babbitt, Minnesota locations of Northshore Mining Company, a subsidiary of Cliffs Natural Resources. The Department has determined that these workers were sufficiently under the control of Northshore Mining Company, a subsidiary of Cliffs Natural Resources to be considered leased workers.

Accordingly, the Department is amending the certification to include workers of the Babbitt, Minnesota location of the subject firm including leased workers from Our Gang Staffing working on-site at the Silver Bay, Minnesota and Babbitt, Minnesota locations of the subject firm.

The amended notice applicable to TA–W–82,473 is hereby issued as follows:

All workers from Northshore Mining Company, a subsidiary of Cliffs Natural Resources, including on-site leased workers from VanHouse, Express Employment and Our Gang Staffing, Silver Bay, Minnesota (TA–W–82,473) and Northshore Mining Company, a subsidiary of Cliffs Natural Resources, including on-site leased workers from VanHouse, Express Employment and Our Gang Staffing, Babbitt, Minnesota (TA–W–82,473A), who became totally or partially separated from employment on or after February 15, 2012, through March 11, 2015, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 2nd day of August 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19543 Filed 8–12–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,859]**

### American Medical Alert Corporation, DBA Tunstall, Clovis, New Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 18, 2013, applicable to workers of American Medical Alert Corporation, doing business as Tunstall, Long Island City, New York. The notice has not yet been published in the **Federal Register**.

At the request of the subject firm, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of call center services.

The subject firm reports that the information supplied during the investigation pertains to the location in Clovis, New Mexico, not Long Island City, New York.

The amended notice applicable to TA–W–82,859 is hereby issued as follows:

All workers of American Medical Alert Corporation, doing business as Tunstall, Clovis, New Mexico, who became totally or partially separated from employment on or after June 27, 2012 through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 2nd day of August, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19542 Filed 8–12–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,304]**

### Bristol Compressors International, Inc. Including On-Site Leased Workers From Bright Services, Atwork and Express Employment Professionals, Bristol, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 2012, applicable to workers of Bristol Compressors International, Inc., Bristol, Virginia, including on-site leased workers from Bright Services. The Department's notice of determination was published in the **Federal Register** on February 28, 2012 (77 FR 12082).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of reciprocating compressors and heating pumps.

The company reports that workers leased from ATWork and Express Employment Professionals were employed on-site at the Bristol, Virginia location of Bristol Compressors International, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from ATWork and Express Employment Professionals working on-site at the

Bristol, Virginia location of Bristol Compressors International, Inc.

The amended notice applicable to TA–W–81,304 is hereby issued as follows:

All workers of ATWork and Express Employment Professionals, reporting to Bristol Compressors International, Inc., Bristol, Virginia, who became totally or partially separated from employment on or after February 7, 2011, through February 9, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 26th day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19546 Filed 8–12–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *July 22, 2013 through July 26, 2013.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in

subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,643 | Checkerboard Ltd, Saavy Staffing, Coworx Staffing | West Boylston, MA | April 9, 2012. |
| 82,661 | McKechnie Vehicle Components USA, Inc., Newberry Operations, Roper Personnel Services. | Newberry, SC | April 16, 2012. |
| 82,686 | Sykes Enterprises, Incorporated, Excluding Workers from Sykes Enterprises, Client Support Acct #0225001. | Spokane Valley, WA | April 22, 2012. |
| 82,783 | Gunderson, LLC, Greenbrier Companies, Inc., Madden Industrial Craftsmen Inc., Aerotek. | Portland, OR | June 5, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,739 | Navarre Corporation, Transactional Finance Group, Midwest Staffing | New Hope, MN | May 14, 2012. |
| 82,778 | Energizer, Adecco | Westlake, OH | June 3, 2012 |
| 82,805 | Citi, Corporate Finance for Operations & Technology, Corporate Realty Services. | New York, NY | June 11, 2012. |
| 82,805A | Citi, Corporate Finance for Operations & Technology, Corporate Realty Services. | Fort Lauderdale, FL | June 11, 2012. |
| 82,811 | Computer Sciences Corporation (CSC), Global Infrastructure Services (GIS), GIS Service Excellence Organization. | Coppell, TX | June 12, 2012. |
| 82,821 | National Underwriter Company (The), Summit Business Media, Media Production Department. | Erlanger, KY | June 7, 2012. |
| 82,821A | National Underwriter Company (The), Summit Business Media, Media Production Department. | Centennial, CO | June 7, 2012. |
| 82,841 | TeleFlight Ltd, British Airways, Call Centre, Tech Systems | Jacksonville, FL | May 25, 2012. |
| 82,861 | Firmenich, Inc | Port Newark, NJ | June 26, 2012. |
| 82,866 | Liquid Common Inc. DBA Table Tents, Excel Staffing Companies, Hubport Group, Commercial Finance Group, etc. | Albuquerque, NM | July 1, 2012. |
| 82,886 | Chemtura Corporation, Information Technology Division, Adecco | Middlebury, CT | July 8, 2012. |
| 82,888 | Resco Electronics LLC | San Antonio, TX | July 9, 2012. |
| 82,905 | Philips Lighting Company, Lighting Division, Adecco Employment Services | Bath, NY | August 24, 2013. |
| 82,910 | Thermtrol MGI Global LLC, Thermtrol Corporation, Most Valuable Personnel | Cary, IL | July 8, 2012. |
| 82,915 | Micron Technology, Inc., Data Center Solutions Division | Beaverton, OR | July 9, 2012. |
| 82,918 | Hartford Financial Services Group, Inc., Corporate/IT/Consumer Markets | Simsbury, CT | July 18, 2012. |
| 82,919 | Hartford Financial Services Group, Inc., Operations, Commercial Markets, Group Benefits, Pre-Sale Client Admin. | Windsor, CT | July 18, 2012. |
| 82,919A | Hartford Financial Services Group, Inc., Operations, Commercial Markets, Group Benefits, Pre-Sale Client Admin. | Overland Park, KS | July 18, 2012. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,421 | SuperMedia LLC, Publishing Ops. Div., Artists Group, SuperMedia Inc., Asec, etc. | Bensalem, PA. | |
| 82,548 | SuperMedia LLC, Client Care Division, Advertising Group, SuperMedia Inc., TAC, etc. | Middleton, MA. | |
| 82,611 | Mid-Atlantic Manufacturing & Hydraulics, Inc., Swanson Industries, Manpower. | Rural Retreat, VA. | |
| 82,637 | Metal Processing International, L.P., Manpower, Staff Force Personnel Services, Express Personnel. | Mission, TX. | |
| 82,651 | Anthem Workers Compensation, Wellpoint | Costa Mesa, CA. | |
| 82,652 | American Air Filter | Lebanon, IN. | |
| 82,785 | Boeing Company (The), Shared Services Group, Sites Services | Houston, TX. | |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,832 | Saxon Mortgage Services, Inc., Saxon Mortgage, Inc., Morgan Stanley, Saxon Funding Management, Inc. | Irving, TX. | |
| 82,832A | Saxon Mortgage Services, Inc., Saxon Mortgage, Inc., Morgan Stanley, Saxon Funding Management, Inc. | Fort Worth, TX. | |
| 82,850 | Ozarks Area Community Action Corporation, Weatherization Program | Springfield, MO. | |
| 82,874 | Setra of North America, Inc., Daimler Buses North America, Inc., Graham Personnel Service. | Greensboro, NC. | |

I hereby certify that the aforementioned determinations were issued during the period of *July 22, 2013 through July 26, 2013.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 1st day of August 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19548 Filed 8–12–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of August 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

## APPENDIX

[16 TAA petitions instituted between 7/22/13 and 7/26/13]

| TA–W | Subject firm (Petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82922 | Eli Lilly & Company (State/One-Stop) | Indianapolis, IN | 07/22/13 | 07/19/13 |
| 82923 | Axa Advisors, LLC (State/One-Stop) | New York, NY | 07/23/13 | 07/22/13 |
| 82924 | IBM (Workers) | Dublin, OH | 07/23/13 | 07/22/13 |
| 82925 | IBM (Workers) | Austin, TX | 07/23/13 | 07/22/13 |
| 82926 | Salter Labs (Company) | Arvin, CA | 07/23/13 | 07/22/13 |
| 82927 | Honeywell (Workers) | Strongsville, OH | 07/23/13 | 07/16/13 |
| 82928 | Doe Run Company (The) (Company) | Herculaneum, MO | 07/24/13 | 07/23/13 |
| 82929 | D.B. Hess Company (The) (State/One-Stop) | Woodstock, IL | 07/24/13 | 07/23/13 |
| 82930 | International Paper—XPEDX Division (State/One-Stop) | Olathe, KS | 07/25/13 | 07/24/13 |
| 82931 | Tenneco Automotive (State/One-Stop) | Cozad, NE | 07/25/13 | 07/24/13 |
| 82932 | Atmel Corporation (State/One-Stop) | Colorado Springs, CO | 07/25/13 | 07/24/13 |
| 82933 | Van Wagenen Financial Services, Inc. (State/One-Stop) | Eden Prairie, MN | 07/25/13 | 07/18/13 |
| 82934 | CorTech, LLC (State/One-Stop) | West Helena, AR | 07/25/13 | 07/24/13 |
| 82935 | Chrome Deposit Corp (Workers) | Weirton, WV | 07/25/13 | 07/25/13 |
| 82936 | Grede Omaha LLC (State/One-Stop) | Lincoln, NE | 07/25/13 | 07/19/13 |
| 82937 | Cambia Health Solutions, Inc. (Company) | Lewiston, ID | 07/26/13 | 07/18/13 |

[FR Doc. 2013–19547 Filed 8–12–13; 8:45 am]
**BILLING CODE 4510–FN–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–093]**

### Centennial Challenges 2014 Sample Return Robot Challenge

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of Centennial Challenges 2014 Sample Return Robot Challenge.

**SUMMARY:** This notice is issued in accordance with 51 U.S.C. 20144(c).

The 2014 Sample Return Robot Challenge is scheduled and teams that wish to compete may register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The 2014 Sample Return Robot Challenge is a prize competition designed to encourage development of new technologies or application of existing technologies in unique ways to create robots that can autonomously seek out samples and return to a designated point in a set time period. Worcester Polytechnic Institute (WPI) of Worcester, Massachusetts administers the Challenge for NASA. NASA is providing the prize purse.

**DATES:** 2014 Sample Return Robot Challenge will be held June 10–13, 2014.

**ADDRESSES:** 2014 Sample Return Robot Challenge will be conducted at Worcester Polytechnic Institute, Worcester MA.

**FOR FURTHER INFORMATION CONTACT:** To register for or get additional information regarding the 2014 Sample Return Robot Challenge, please visit: *http://challenge.wpi.edu.*

For general information on the NASA Centennial Challenges Program please visit: *www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Dr. Larry Cooper, Centennial Challenges Program, NASA Headquarters 300 E Street SW., Washington, DC, 20546–0001. Email address: *larry.p.cooper@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Summary

Autonomous robot rovers will seek out samples and return them to a designated point in a set time period. Samples will be randomly placed throughout the roving area. They may be placed close to obstacles, both movable and immovable. Robots will be required to navigate over unknown terrain, around obstacles, and in varied lighting conditions to identify, retrieve, and return these samples. Winners will be determined based on the number of samples returned to the designated collection point as well as the value assigned to the samples.

#### I. Prize Amounts

The total Sample Return Robot Challenge purse is $1,495,000 (one million four hundred ninety five thousand U.S. dollars). Prizes will be offered for entries that meet specific requirements detailed in the Rules.

#### II. Eligibility

To be eligible to win a prize, competitors must (1) register and comply with all requirements in the rules and team agreement; (2) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and (3) shall not be a Federal entity or Federal employee acting within the scope of their employment.

#### III. Rules

The complete rules and team agreement for the 2014 Sample Return Robot Challenge can be found at: *http://challenge.wpi.edu*

Dated: July 17, 2013.

**James J. Reuther,**

*Deputy Associate Administrator for Programs, Space Technology Mission Directorate, National Aeronautics and Space Administration.*

[FR Doc. 2013–19613 Filed 8–12–13; 8:45 am]
**BILLING CODE P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–091]**

### NASA International Space Station Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA International Space Station (ISS) Advisory Committee. The purpose of the meeting is to assess all aspects related to the safety and operational readiness of the ISS, and to assess the possibilities for using the ISS for future space exploration.

**DATES:** September 3, 2013, 1:00–2:00 p.m., Local Time.

**ADDRESSES:** NASA Headquarters, Glennan Conference Room, 1Q39, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Mann, Office of International and Interagency Relations, (202) 358–5140, NASA Headquarters, Washington, DC 20546–0001.

**SUPPLEMENTARY INFORMATION:** It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. This meeting will be open to the public up to the seating capacity of the room. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Mr. Mann via email at *gmann@nasa.gov* or by telephone at (202) 358–5140 or fax at (202) 358–3030. U.S. citizens and permanent residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Mr. Mann.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013–19517 Filed 8–12–13; 8:45 am]
**BILLING CODE 7571–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–092]**

### NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting.

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held via Teleconference and WebEx for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Friday, September 20, 2013, 2:00 p.m. to 3:00 p.m., Local Time.

**ADDRESSES:** This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–857–7040, pass code APS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*, meeting number 990 167 232, and password APS@Sept20.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, or *mnorris@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

—Nuclear Spectroscopic Telescopic Array Data Policy

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013–19518 Filed 8–12–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–094]**

### NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Tuesday, September 17, 2013, 9:00 a.m. to 5:00 p.m., and Wednesday, September 18, 2013, 8:30 a.m. to 4:00 p.m., Local Time.

**ADDRESSES:** NASA Headquarters, Rooms 6J42 and 1Q39 consecutively, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–3094, or *mnorris@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically. Any interested person may call the USA toll free conference call number 800–857–7040, pass code HPS, to participate in this meeting by telephone. The agenda for the meeting includes the following topics:

— Heliophysics Division Overview and Program Status
— Flight Mission Status Report
— Heliophysics Science Performance Assessment
— Heliophysics Roadmap for Science and Technology 2013–2033 Status

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–3094. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013–19592 Filed 8–12–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference meeting of the Executive Committee National Science Board.

**AGENCY HOLDING MEETING:** National Science Board

**DATE AND TIME:** Thursday, August 8, 2013 from 5:00–6:00 p.m.

**SUBJECT MATTER:** Discussion of legislative matters.

**STATUS:** Closed.

**PLACE:** This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

**UPDATES:** Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

**AGENCY CONTACT:** Peter Arzberger, contact at 703/292–8000 or *parzberg@nsf.gov.*

**Ann Bushmiller,**

*NSB Senior Legal Counsel.*

[FR Doc. 2013–19635 Filed 8–9–13; 11:15 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0171]**

## Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; opportunity to comment, opportunity to request a hearing and petition for leave to intervene; order.

**DATES:** Comments must be filed by September 12, 2013. A request for a hearing or petition for leave to intervene must be filed by October 15, 2013. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by August 23, 2013.

**ADDRESSES:** You may submit comment 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–2013–0171. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06A44M, 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.

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0171 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0171.
- *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 notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2013–0171 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this notice. The Act requires the Commission publish notice of any amendments issued or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant

Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition

for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

*Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Date of amendment request:* September 25, 2012, as supplemented by letter dated December 17, 2012. A publicly available version is in ADAMS under Accession No. ML12285A428.

*Description of amendment request:* This license amendment request (LAR) contains sensitive unclassified non-safeguards information (SUNSI). The LAR requests NRC review and approval for adoption of a new risk-informed, performance-based (RI–PB) fire protection licensing basis for Brunswick Steam Electric Plant, Units 1 and 2. The request is submitted in accordance with the requirements in 10 CFR 50.48(a) and (c), and the guidance in NRC Regulatory Guide (RG) 1.205, ''Risk-Informed Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' National Fire Protection Association (NFPA) 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants (2001),'' and Nuclear Energy Institute (NEI) 04–02, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program under 10 CFR 50.48(c).''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2 in accordance with the proposed amendment does not result in a significant increase in the probability or consequences of accidents previously evaluated. The proposed amendment does not affect accident initiators or precursors as described in the BSEP Updated Final Safety Analysis Report (UFSAR), nor does it adversely alter design assumptions, conditions, or configurations of the facility, and it does not adversely impact the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the way in which safety-related systems perform their functions as required by the accident analysis. The SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The purpose of this amendment is to permit BSEP, Units 1 and 2 to adopt a new risk-informed, performance-based fire protection licensing basis that complies with the requirements in 10 CFR 50.48(a) and 10 CFR 50.48(c), as well as the guidance contained in Regulatory Guide (RG) 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR Part 50, Appendix R, fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic risk assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been met.

NFPA 805, taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 (GDC 3) of Appendix A to 10 CFR Part 50, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and achieves defense-in-depth along with the goals, performance objectives, and performance criteria specified in NFPA 805, Chapter 1. In addition, if there are any increases in core damage frequency (CDF) or risk as a result of the transition to NFPA 805, the increase will be small, governed by the delta risk requirements of NFPA 805, and consistent with the intent of the Commission's Safety Goal Policy.

Based on the above, the implementation of this amendment to transition the Fire Protection Plan at BSEP, Units 1 and 2 to one based on NFPA 805, in accordance with 10 CFR 50.48(c), does not result in a significant increase in the probability of any accident previously evaluated.

In addition, all equipment required to mitigate an accident remains capable of performing the assumed function.

Therefore, the consequences of any accident previously evaluated are not significantly increased with the implementation of this amendment.

Criterion 2: Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of BSEP, Units 1 and 2 in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose consequences was included in the evaluation of design basis accidents (DBA) documented in the UFSAR as a part of the transition to NFPA 805. The proposed amendment does not impact these accident analyses. The proposed change does not alter the requirements or functions for systems required during accident conditions, nor does it alter the required mitigation capability of the fire protection program, or its functioning during accident conditions as assumed in the licensing basis analyses and/or DBA radiological consequences evaluations.

The proposed amendment does not adversely affect accident initiators nor alter design assumptions, or conditions of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to maintain the unit in a safe and stable condition remains capable of performing their design functions. The purpose of the proposed amendment is to permit BSEP, Units 1 and 2 to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205. As indicated in the Statements of Consideration, the NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features.

The requirements in NFPA 805 address only fire protection and the impacts of fire effects on the plant have been evaluated. The proposed fire protection program changes do not involve new failure mechanisms or malfunctions that could initiate a new or different kind of accident beyond those already analyzed in the UFSAR. Based on this, as well as the discussion above, the implementation of this amendment to transition the Fire Protection Plan at BSEP, Units 1 and 2 to one based on NFPA 805, in accordance with 10 CFR 50.48(c), does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of BSEP, Units 1 and 2 in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. The transition to a new risk-informed, performance-based fire protection licensing basis that complies with the requirements in 10 CFR 50.48(a) and 10 CFR 50.48(c) does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed in the UFSAR to mitigate accidents.

The proposed change does not adversely impact systems that respond to safely shut down the plant and maintain the plant in a safe shutdown condition. In addition, the proposed amendment will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without implementation of appropriate compensatory measures. The purpose of the proposed amendment is to permit BSEP, Units 1 and 2 to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R required fire protection features (69 FR 33536, June 16, 2004).

The risk evaluations for plant changes, in part as they relate to the potential for reducing a safety margin, were measured quantitatively for acceptability using the delta risk guidance contained in RG 1.205. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods of NFPA 805 do not result in a significant reduction in the margin of safety.

As such, the proposed changes are evaluated to ensure that risk and safety margins are kept within acceptable limits. Based on the above, the implementation of this amendment to transition the Fire Protection Plan at BSEP, Units 1 and 2 to one based on NFPA 805, in accordance with 10 CFR 50.48(c), will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lara S. Nichols, 550 South Tryon Street, M/C DEC45A, Charlotte NC 28202.

*NRC Branch Chief:* Jessie Quichocho.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama*

*Date of amendment request:* February 28, 2013. A publicly available version is in ADAMS under Accession No. ML13070A307.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed license amendment would add three AREVA NP analysis methodologies to the list of approved methods to be used in determining core operating limits in Technical Specification (TS) 5.6.5, Core Operating Limits Report (COLR). This proposed change would support a planned transition to AREVA ATRIUM–10XM (XM) fuel design. In addition, the amendment would also revise TS 2.1.1.2 to change the safety limit minimum critical power ratio value for BFN Unit 2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Changing the fuel design, adding the additional approved methodologies to the Technical Specifications, and revising the unit 2 SLMCPR [Safety Limit Minimum Critical Power Ratio] value in the Technical Specifications will not increase the probability of a LOCA [Loss-of-Coolant Accident]. The fuel cannot increase the probability of a primary coolant system breach or rupture, as there is no interaction between the fuel and the system piping. The fuel will continue to meet the 10 CFR 50.46 limits for peak clad temperature, oxidation fraction, and hydrogen generation. Therefore, the consequences of a LOCA will not be increased.

Similarly, changing fuel type and revising the Technical Specifications as proposed cannot increase the probability of an abnormal operating occurrence (AOO). As a passive component, the fuel does not interact with plant operating or control systems. Therefore, the fuel change cannot affect the initiators of the previously evaluated AOO transient events. Thermal limits for the new fuel will be determined on a reload specific basis, ensuring the specified acceptable fuel design limits continue to be met. Therefore, the consequences of a previously evaluated AOO will not increase.

The refueling accident is potentially affected by a change in fuel design, due to the mechanical interaction between the fuel and the refueling equipment. However, the probability of the refueling accident with XM fuel is not increased because the upper bail handle is designed to be mechanically compatible with existing fuel handling equipment. The design weight of the XM design is similar to other designs in use at BFN, and is well within the design capability of the refueling equipment. The consequences of the refueling accident are similar to the current ATRIUM–10 fuel, remaining well within the design basis (7×7 fuel) evaluation in the UFSAR [Updated Final Safety Analysis Report].

The probability of a control rod drop accident does not increase because the XM fuel channel is mechanically compatible with the co-resident ATRIUM–10 fuel, and the existing control blade designs. The mechanical interaction and friction forces between the XM fuel channel, and control blades, would not be higher than previous designs. In addition, routine plant testing includes confirmation of adequate control blade to control rod drive coupling. The probability of a rod drop accident is not increased with the use of XM fuel. Control rod drop accident consequences are evaluated on a cycle specific basis, confirming the number of calculated fuel rod failures remains with the UFSAR design basis.

The dose consequences of all the previously evaluated UFSAR accidents remain with the limits of 10 CFR 50.67.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The XM fuel product has been designed to maintain neutronic, thermal-hydraulic, and mechanical compatibility with the NSSS [nuclear steam supply system] vendor fuel designs. The XM fuel has been designed to meet fuel licensing criteria specified in NUREG–0800, ''Standard Review Plan for Review of Safety Analysis Reports for Nuclear Power Plants.'' Compliance with these criteria ensures the fuel will not fail in an unexpected manner.

A change in fuel design and revising the Technical Specifications as proposed cannot create any new accident initiators because the fuel is a passive component, having no direct influence on the performance of operating plant systems and equipment. Hence, a fuel design change cannot create a new type of malfunction leading to a new or different kind of transient or accident.

Consequently, the proposed fuel design change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

Response: No.

The XM fuel is designed to comply with the fuel licensing criteria specified in NUREG–0800. Reload specific and cycle independent safety analyses are performed ensuring no fuel failures will occur as the result of abnormal operational transients, and dose consequences for accidents remain with the bounds of 10 CFR 50.67. All regulatory margins and requirements are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, TVA concludes the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Jessie F. Quichocho.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, Limestone County, Alabama*

*Date of amendment request:* March 27, 2013 (publicly available version is in ADAMS under Accession No. ML13092A392), as supplemented by letter dated May 16, 2013 (ADAMS Accession No. ML13141A291).

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed license amendment requests NRC approval to adopt a new fire protection licensing basis that complies with the requirements in 10 CFR 50.48(a), 10 CFR 50.48(c), and the guidance in Regulatory Guide 1.205, Revision 1, ''Risk-Informed, Performance Based Fire Protection for Existing Light-Water Nuclear Power Plants.'' This license amendment request also follows the guidance in Nuclear Energy Institute 04–02, Revision 2, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c).'' If approved, the BFN fire protection program would transition to a new risk-informed, performance-based alternative in accordance with 10 CFR 50.48(c), which incorporates by reference National Fire Protection Association Standard 805.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of Browns Ferry Nuclear Plant (BFN) in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of accidents previously evaluated. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents (DBAs) at BFN. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, and components (SSCs) to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown (SSD) condition will remain capable of performing their design functions.

The purpose of this amendment is to permit BFN to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of Regulatory Guide (RG) 1.205. The NRC considers that National Fire Protection Association (NFPA) 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part

50, Appendix R fire protection features. Engineering analyses, in accordance with NFPA 805, have been performed to demonstrate that the risk-informed, performance-based (RI–PB) requirements per NFPA 805 have been met.

NFPA 805, taken as a whole, provides an acceptable alternative to 10 CFR 50.48(b) and satisfies 10 CFR 50.48(a) and General Design Criterion 3 of Appendix A to 10 CFR Part 50 and meets the underlying intent of the NRC's existing fire protection regulations and guidance, achieves defense-in-depth (DID) and the goals, performance objectives, and performance criteria specified in Chapter 1 of NFPA 805. Additionally, 10 CFR 50.48(c) allows self approval of fire protection program changes post-transition. If there are any increases post-transition in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

The improved modeling associated with the elimination of Containment Accident Pressure credit does not change the design functions of the systems. By maintaining these functions, the probability or consequences of an accident previously evaluated is not significantly increased.

Based on this, the implementation of this amendment does not involve a significant increase in the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function. Therefore, the implementation of this amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed technical specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of BFN in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205 will not result in new or different accidents. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility.

The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit BFN to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features.

The requirements in NFPA 805 address only fire protection and the impacts of fire on the plant that have already been evaluated. Based on this, the implementation of this amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. The proposed changes do not involve new failure mechanisms or malfunctions that can initiate a new accident.

The improved modeling associated with the elimination of Containment Accident Pressure credit does not change the design functions of the systems. The systems are not accident initiators and by maintaining their current functions, they do not create the possibility of a new or different kind of accident.

Therefore, the implementation of this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed technical specification change involve a significant reduction in a margin of safety?

Response: No.

Operation of BFN in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design function.

The purpose of this amendment is to permit BFN to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Revision 1 of RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods do not result in a significant reduction in the margin of safety.

The improved modeling associated with the elimination of Containment Accident Pressure credit does not change the design functions within the applicable limits.

Based on this, the implementation of this amendment does not significantly reduce the margin of safety. The proposed changes are evaluated to ensure that the risk and safety margins are kept within acceptable limits. Therefore, the transition does not involve a significant reduction in the margin of safety. The requirements of NFPA 805 are structured to implement the NRC's mission to protect public health and safety, promote the common defense and security, and protect the environment. NFPA 805 is also consistent with the key principles for evaluating license basis changes, as described in RG 1.174, is consistent with the DID philosophy, and maintains sufficient safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Jessie F. Quichocho.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate

General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 5th day of August 2013.

For the Nuclear Regulatory Commission.

**Rochelle C. Bavol,**

*Acting Secretary of the Commission.*

**Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding**

| Day | Event/Activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

| Day | Event/Activity |
|---|---|
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2013–19320 Filed 8–12–13; 8:45 am]
BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–445 and 50–446; NRC–2013–0182]**

## Luminant Generation Company LLC, Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Application for Amendment to Facility Operating License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal.

**ADDRESSES:** Please refer to Docket ID NRC–2013–0182 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 are publicly available, using any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0182. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; 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 ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *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:** Balwant K. Singal, Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3016; email: *Balwant.singal@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Luminant Generation Company LLC (the licensee) to withdraw its application dated October 2, 2012 (ADAMS Accession No. ML12285A091), for a proposed amendment to Facility Operating License Nos. NPF–87 and NPF–89 for the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2, respectively, located in Somervell County, Texas.

The proposed amendment would have revised Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' and TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to relocate the TS requirements for the following instruments to the Technical Requirements Manual, a licensee-controlled document:

• Pressurizer Water Level—High (RTS Function No. 9),

• Trip of all Main Feedwater Pumps (ESFAS Function No. 6.g),

• ESFAS Interlock Reactor Trip, P–4 (ESFAS Function No. 8.a).

The proposed changes would have relocated the TS requirements in their entirety and would not have resulted in deletion or alteration of any RTS or ESFAS requirements. The proposed relocation of the TS requirements for these RTS and ESFAS instrument Functions was based on the application of TS criteria of Title 10 of the *Code of Federal Regulations,* (10 CFR) paragraph 50.36(c)(2)(ii).

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 22, 2013 (78 FR 4472). However, by letter dated July 25, 2013 (ADAMS Accession No. ML13218A100), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for

amendment dated October 2, 2012, and the licensee's letter dated July 25, 2013, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 6th day of August 2013.

For the Nuclear Regulatory Commission.

**Balwant K. Singal,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–19540 Filed 8–12–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission [NRC–2013–0001].

**DATE:** Weeks of August 12, 19, 26, September 2, 9, 16, 2013

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of August 12, 2013**

There are no meetings scheduled for the week of August 12, 2013.

**Week of August 19, 2013—Tentative**

There are no meetings scheduled for the week of August 19, 2013.

**Week of August 26, 2013—Tentative**

*Monday August 26, 2013*

2:00 p.m. Discussion of Management and Personnel Issues

(Closed—Ex. 2 and 6)

*Tuesday, August 27, 2013*

9:00 a.m. Briefing on NRC's Construction Activities (Public Meeting)

(Contact: Michelle Hayes, 301–415–8375)

This meeting will be webcast live at the Web address—*www.nrc.gov*

3:00 p.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9) (Contact: Karen Henderson, 301–415–0202)

**Week of September 2, 2013—Tentative**

There are no meetings scheduled for the week of September 2, 2013.

**Week of September 9, 2013—Tentative**

There are no meetings scheduled for the week of September 9, 2013.

**Week of September 16, 2013—Tentative**

There are no meetings scheduled for the week of September 16, 2013.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: August 8, 2013.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2013–19711 Filed 8–9–13; 4:15 pm]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Regulation 12B;

OMB Control No. 3235–0062, SEC File No. 270–70.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation 12B (17 CFR 240.12b–1—12b–37) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') includes rules governing the registration and periodic reporting requirements under Sections 12(b), 12(g), 13(a), and 15(d) (15 U.S.C. 78l(b), 78l(g), 78m(a) and 78o(d)) of the Exchange Act. The purpose of the regulation is to set forth guidelines for the uniform preparation of Exchange Act registration statements and reports. Regulation 12B is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 7, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19513 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange

Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:* Form 15F;
OMB Control No. 3235–0621, SEC File No. 270–559.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 15F (17 CFR 249.324) is filed by a foreign private issuer when terminating its Exchange Act reporting obligations pursuant to under Exchange Act Rule 12h–6 (240.12h–6). Form 15F requires a foreign private issuer to disclose information that helps investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assist Commission staff in determining whether the filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h–6. Rule 12h–6 provides a process for a foreign private issuer to exit the Exchange Act registration and reporting regime when there is relatively little U.S. investor interest in its securities. Rule 12h–6 is intended to remove a disincentive for foreign private issuers to register their securities with the Commission by lessening concerns that the Exchange Act registration and reporting system would be difficult to exit once an issuer enters it. We estimate that Form 15F takes approximately 30 hours to prepare and is filed by approximately 100 issuers. We estimate that 25% of the 30 hours per response (7.5 hours per response) is prepared by the filer for a total annual reporting burden of 750 hours (7.5 hours per response × 100 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 7, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19515 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Regulation C;
OMB Control No. 3235–0074, SEC File No. 270–68.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation C (17 CFR 230.400 through 230.498) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides standard instructions for persons filing registration statements under the Securities Act. The information collected is intended to ensure the adequacy of information available to investors. Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

August 7, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19512 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0213.

*Extension:*
Form ID;
OMB Control No. 3235–0328, SEC File No. 270–291.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ID (OMB Control No. 3235–0328; SEC File No. 270–291) is used by companies and other entities to apply for identification numbers and passwords used in conjunction with the EDGAR electronic filing system. The information provided on Form ID is essential to the security of the EDGAR system. Form ID must be filed every time a registrant or other person obtains or changes an identification number.

Form ID is filed by individuals, companies or other for-profit organizations that are required to file electronically. We estimate approximately 65,784 registrants file Form ID and it takes approximately an estimated 0.15 hours per response for a total annual burden of 9,868 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 7, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19516 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69903A; File No. SR–CHX–2013–12]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee; Correction

July 1, 2013.

**AGENCY:** Securities And Exchange Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Securities and Exchange Commission published a document in the **Federal Register** of July 8, 2013 concerning a Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee. The document was dated incorrectly.

**FOR FURTHER INFORMATION CONTACT:** Dhawal Sharma, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5779.

**Correction**

In the **Federal Register** of July 8, 2013, in FR Doc. 2013–16232, on page 40788, in the 21st line of the second column, the date is corrected to read as noted above.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19514 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69829A; File No. SR–PHLX–2013–65]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change Relating To Which Complex Orders Can Initiate a Complex Order Live Auction; Correction

June 21, 2013.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Securities and Exchange Commission published a document in the **Federal Register** of June 27, 2013 concerning a Notice of Filing of Proposed Rule Change Relating to Which Complex Orders Can Initiate a Complex Order Live Auction. The document was dated incorrectly.

**FOR FURTHER INFORMATION CONTACT:** Charles Sommers, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5787.

**Correction**

In the **Federal Register** of June 27, 2013, in FR Doc. 2013–15370, on page 38750, in the 27th line of the third column, the date is corrected to read as noted above.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19511 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70129; File No. SR–NASDAQ–2013–099]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Connectivity Options and Fees

August 7, 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 July 25, 2013 The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 modify NASDAQ connectivity options and fees. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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 Exchange proposes to modify Rule 7034(b) regarding connectivity to NASDAQ. Specifically, the Exchange proposes to establish connectivity and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

installation fees for a 10Gb Ultra low latency fiber connection option, and provide a waiver of installation fees for subscriptions through August 31, 2013.

The Exchange currently offers various bandwidth options for connectivity to NASDAQ, including a 40Gb fiber connection, a 10Gb fiber connection, a 1Gb fiber connection, and a 1Gb copper connection.[3] In keeping with changes in technology, the Exchange now proposes to provide a second 10Gb fiber connection offering, which uses new ultra-low latency switches.[4] A switch is a type of network hardware that acts as the ''gatekeeper'' for all of a co-located client's orders sent to the System [5] at the NASDAQ co-location facility and orders them in sequence for entry into the System for execution. Each of NASDAQ's current connection offerings use different switches between the offerings, but the switches are of uniform type within each offering. As a consequence, all co-located client subscribers to a particular connectivity option receive the same latency in terms of the capabilities of their switches. The 10Gb Ultra offering uses a new ultra-low latency switch, which provides faster processing of orders sent to it in comparison to the current switch in use for co-location connectivity. As a consequence, co-located clients needing only 10Gb of bandwidth, but that seek faster processing of those orders as they enter NASDAQ's co-location facility now have the option to subscribe to a faster and more efficient connection to the Exchange.[6]

The Exchange proposes a monthly subscription fee of $15,000 for a 10Gb Ultra connection, and a one-time installation fee of $1,500, which is identical to the 40Gb fiber connectivity option. NASDAQ believes that the pricing is reflective of the value the option will provide and the hardware and other infrastructure and maintenance costs to NASDAQ associated with offering technology that is at the forefront of the industry. The growth in the size of consolidated and proprietary data feeds has resulted in demand for faster processing of message traffic, and ultra-low latency switches meet this demand by decreasing the time individual orders are processed and market data is transmitted by these new switches. The Exchange's proposal provides the co-located client the option for faster switch processing, which is highly-valued among some market participants. NASDAQ notes that other markets have adopted low-latency connectivity options for their clients. For example, the International Securities Exchange LLC (''ISE'') offers a 10Gb low latency Ethernet connectivity option to its clients, which provides a ''higher speed network to access [ISE's] Optimise trading system.'' [7]

The Exchange also proposes to provide a waiver of the installation fees for client orders of 10Gb Ultra fiber connectivity to NASDAQ completed between the effectiveness of this proposal and August 31, 2013. The Exchange is providing the waiver to assist its co-located clients in upgrading to lower latency connections to meet the growing needs of co-located clients' business operations. NASDAQ is adding text to the rule that makes it clear that the connectivity option also provides connection to the markets of NASDAQ OMX BX, Inc. (''BX'') and NASDAQ OMX PHLX LLC (''Phlx). NASDAQ is deleting text that refers to an installation fee waiver time period for 10Gb and 40Gb fiber connections, which has since expired.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [10] 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the fees assessed for 10Gb Ultra fiber connectivity fee allow the Exchange to cover the costs associated with the purchase of new, state of the art switches for this new offering. Because the switches are best in breed, they are priced at a premium, the cost of which NASDAQ must bear. NASDAQ is offering 10Gb Ultra fiber connectivity at the same price as 40Gb fiber connectivity. Both the proposed 10Gb Ultra fiber connectivity and 40Gb fiber connectivity represent the best performance available to co-located clients. 40Gb fiber connectivity provides the greatest bandwidth available on NASDAQ, which is important for co-located clients that have high order flow and ingest large amounts of market data and demand the greatest bandwidth possible to handle such message flow. Some co-located clients, however, do not have bandwidth demands that would require 40Gb fiber bandwidth but rather put a premium on reducing latency. The 10Gb Ultra fiber connectivity it designed to meet this demand. As a consequence, both 40Gb and 10Gb Ultra fiber connectivity represent the best connectivity NASDAQ offers in terms of bandwidth and latency, respectively.

NASDAQ believes that the proposed one-time installation fee is consistent with Section 6(b)(4) of the Act because it is identical to the installation fees assessed for 40Gb fiber connectivity under the rule. NASDAQ notes that it will incur the same costs associated with setting up a subscriber with either 40Gb fiber or 10Gb Ultra fiber connectivity. As a consequence, NASDAQ believes that it is reasonable to assess the same installation fee as 40Gb fiber. The Exchange also believes that its proposal to waive temporarily the 10Gb Ultra fiber connection installation fee is reasonable because it will assist its co-located clients in upgrading to lower latency connections to meet the growing needs of the co-located clients' business operations at a time in the industry when speed continues to be a driver of the U.S. securities markets. Moreover, the Exchange notes that it has previously waived the installation fees for the 10Gb and 40Gb fiber connections for a limited time after these connectivity options were first introduced.[11]

In addition to covering costs, the proposed fees will allow the Exchange to recoup costs associated with providing the 10Gb Ultra fiber connection and provide the Exchange a profit while providing customers the possibility of reducing the number of their connections to the Exchange. As discussed above, ISE offers different

[3] Rule 7034(b).

[4] The term ''Latency'' for these purposes is a measure of the time it takes for an order to enter into a switch and then exit for entry into the System.

[5] As defined by Rule 4751(a).

[6] The Exchange is not offering a low latency option for other bandwidth connections at this time, but may do so in the future.

[7] See Securities Exchange Act Release No. 66525 (March 7, 2012), 77 FR 14847 (March 13, 2012) (SR–ISE–2012–09).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] See Securities Exchange Act Release No. 66428 (February 21, 2012), 77 FR 11602 (February 27, 2012) (SR–NASDAQ–2012–028).

connectivity options with respect to latency and NYSE Arca, Inc. offers what NASDAQ believes is a similar connectivity option, yet both options do not provide the breadth of connectivity at the same latency as NASDAQ's proposed 10Gb Ultra fiber connectivity option.[12] NASDAQ notes that the 10Gb Ultra fiber option provides connectivity to seven of the NASDAQ OMX Group's U.S. markets (specifically, the cash equities and options markets operated by NASDAQ, BX, and Phlx, and the NASDAQ OMX Futures Exchange), whereas the offerings of other exchanges provide far fewer.[13] Moreover, as new leading-edge technology, the switches to be used for 10Gb Ultra fiber connectivity have lower latency than the switches currently in use by other markets. For these reasons, the Exchange believes the proposed fees for 10Gb Ultra fiber connectivity to NASDAQ are reasonable.

The Exchange also believes the proposed 10Gb Ultra fiber installation and connectivity fees are equitably allocated in that all co-located clients that voluntarily select this service option will be charged the same amount to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. The proposed fees allow the Exchange to recoup costs associated with providing the 10Gb Ultra fiber connection and provide the Exchange a profit while providing customers with the most efficient connection to the System in terms of latency. All co-located clients have the option to select this voluntary co-location connectivity option; however, NASDAQ is not eliminating any existing connectivity options. Accordingly, a co-located client may elect not to subscribe to the 10Gb Ultra fiber connectivity option and retain the option to which it is currently subscribed.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[14] 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The 10Gb Ultra fiber connectivity option assists co-located clients in making their network connectivity more efficient by reducing the time orders take to reach the System once sent from their co-located server and also the time that market data takes to reach their co-located server. Speed and efficiency are important drivers of the U.S. securities markets and NASDAQ is offering a co-location connectivity solution that promotes these drivers by providing state of the art technology that is available to all co-located clients. The Exchange believes the enhanced 10Gb Ultra connection will remove impediments to and perfect the mechanism of a free and open market and a national market system because NASDAQ will provide state of the art switching technology to market participants, which will improve the speed and efficiency of processing orders arriving at the market from clients' co-located servers.

The Exchange also believes that the reduction in latencies attributed to the enhanced 10Gb Ultra connection option serves to protect investors and the public interest. The reduction in latency will provide investors with the most efficient means of processing orders once they reach the Exchange. Higher bandwidth options like NASDAQ's current 10Gb and 40Gb fiber connectivity and the proposed 10Gb Ultra fiber option also remove the potential for data spikes and data gapping issues that result from the transmission of the growing size of the consolidated and proprietary market data feeds. Such data spiking and data gapping issues have the potential for disrupting the marketplace which could negatively impact investors as well as the public interest.

The Exchange also believes the proposed installation and subscription fees for the 10Gb Ultra fiber connectivity option are not unfairly discriminatory because all clients have the option to subscribe to co-locate with NASDAQ and subscribe to the 10Gb Ultra connection. There is no differentiation among co-located clients with regard to the fees charged for these services. The Exchange believes the proposal to waive the 10Gb Ultra fiber connection installation fee is not unfairly discriminatory because the waiver of fees is provided to all co-located clients that volunteer for this particular service option during the prescribed timeframe, and there is no differentiation among co-located clients with regard to the waiver of fees for this option.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that the changes will promote competition by offering co-located clients an additional connectivity option that will enhance their trading operations and ultimately bring greater speed and efficiency to trading in the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that NASDAQ can

[12] NYSE Arca charges $10,000 per month for a 10Gb LCN (Liquidity Center Network) Connection. See *https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_1.3.2012.pdf,* page 13. Although similar, NASDAQ's 10Gb Ultra connection provides even lower latency connectivity to a larger number of markets, which represents the premium over the NYSE Arca 10Gb LCN connectivity option.

[13] The ISE connectivity offering provides access to one market and the NYSE Arca connectivity offering provides connectivity to the four markets of NYSE Euronext.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

immediately offer the 10GB Ultra connectivity to those clients that believe it can enhance the efficiency of their trading.[17] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–NASDAQ–2013–099 *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–NASDAQ–2013–099. 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–NASDAQ–2013–099 and should be submitted on or before September 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19508 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70132; File No. SR–ISE–2013–38]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Related to Market Maker Risk Parameters and Complex Orders

August 7, 2013.

## I. Introduction

On June 5, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''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 related to market maker risk parameters and complex orders. The proposed rule change was published for comment in the **Federal Register** on June 24, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend ISE Rule 722 and ISE Rule 804 to make it mandatory for market makers to enter values into all four of the quotation risk management parameters for all options classes in which they enter quotes. These risk management parameters are available for market maker quotes in single options series and for market maker quotes in complex instruments on the complex order book. Market makers may establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker's quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and contracts sold in an options class, and (4) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. The market maker establishes limits for each of these four parameters, and when the limits are exceeded within the prescribed time frame, the market makers quotes are removed.

The Exchange notes that all ISE market makers currently use the risk management parameters when entering quotes but may inadvertently enter quotes without populating one or more of the parameters, and thereby be exposed to more financial risk than intended. The Exchange indicates that, in order to forestall such an occurrence, ISE market makers requested that the trading system be modified to reject a quote if a value for any of the four risk management parameters for the options class is missing. While entering values into the quotation risk parameters would be mandatory to prevent an inadvertent exposure to financial risk, the Exchange notes that market makers that prefer to use their own risk-management systems could simply enter values that assure the Exchange-provided parameters will not be triggered.[4] Accordingly, the proposal requires that the fields for the quotation risk management parameters be populated, but does not require that members substantively or qualitatively manage their risk using the Exchange-provided tools.

The Exchange also proposes to amend ISE Rule 722 to limit a market maker's financial risk exposure as it relates to the calculation of the aforementioned ISE Rule 804 risk parameters and complex orders legging-into the regular market.[5] Specifically, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69782 (June 18, 2013), 78 FR 37870 (June 24, 2013) (SR–ISE–2013–38) (the ''Notice'').

[4] For example, a market maker could set the value for the total number of contracts executed in a class at a level that exceeds the total number of contracts the market maker actually quotes in an options class.

[5] Pursuant to ISE Rule 722(b)(3)(ii), complex orders may be executed against bids and offers on

Continued

proposes to limit the legging functionality to complex orders with no more than either two or three legs, as determined by the Exchange on a class basis.[6] In the Notice, the Exchange explains that because the execution of each leg of a complex order is contingent on the execution of the other legs and the execution of all the legs in the regular market is processed as a single transaction, not as a series of individual transactions, the legging-in of complex orders presents higher risk to market makers compared to regular orders being entered in multiple series of an options class in the regular market and may cause market makers to exceed the established risk parameters by a greater number of contracts. The Exchange also notes that because the potential to exceed the intended risk parameters is directly proportional to the number of legs associated with a complex order, ISE market makers have requested that the Exchange prevent complex orders from legging into the market if they have a large number of legs. The Exchange believes that because 85% of all complex orders have only two legs, and very few complex orders are entered with more than three legs, the potential risk to market makers in the regular market far out-weighs the potential benefit of offering such functionality to a very limited number of orders.

The Exchange also notes that complex orders with more than three legs (in some cases more than two legs) that could leg into the market except for the proposed limitation will be available for execution on the complex order book. The Exchange states that the execution priority rules contained in ISE Rule 722(b)(2) often prevent the execution of complex orders that might otherwise be executable because legs of a complex order cannot be executed at the same price as a Priority Customer Order in the regular market unless another leg of the order is executed at a price that is better than the best price in the regular market.[7] In other words, if there is a Priority Customer Order on the book in one or more of the series of a complex order, the net price of the complex order has to improve upon the price that would be available if the complex order legged-into the market. Thus, currently there can be complex orders resting on the book that cannot leg-into the market because the permissible ratio cannot be satisfied by the bids and offers in the regular market or because there are Priority Customer Orders in the regular market in one or more of the series of the complex order that prevent its execution. The Exchange believes that preventing orders with more than three legs (in some cases more than two legs) from legging-into the market would not create any unusual circumstances on the complex order book. The Exchange also notes that the priority of complex orders on the complex order book will not be impacted by the proposed rule change.[8]

In the Notice, the Exchange states that checking the risk management parameters following each execution in an options series allows market makers to provide liquidity across multiple series of an options class while mitigating the risk of executing the full cumulative size of all such quotes; however this is not the case when a complex order legs-into the market.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes the proposal is designed to provide market makers with a risk management tool to assist managing the financial exposure of market makers which in turn could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. The Commission believes that greater assurances related to the management of financial risk exposure could enable market makers to enter quotations with larger size, which in turn could benefit investors through increased liquidity for the execution of their orders, and that such increased liquidity could benefits investors by improving prices and lowering volatility in the options market.

As discussed above, the proposed rule change is designed to protect market makers from exposure to inadvertent, excessive risk by modifying the trading system to automatically reject quotations unless values are entered for all four risk management parameters for all options classes in which quotes are entered. ISE asserts that all market makers currently utilize the Exchange provided risk management tool; and the catalyst for the instant proposal was a request from market makers that the entry of values into all four risk management parameters be made mandatory to avoid inadvertent error that could result in unintended financial exposure during quote entry. In addition, while market makers must populate the all risk management parameters in order to have their quotations accepted by the trading system, they may enter values in the parameters which effectively permit them to bypass the Exchange provided risk management tool in favor of a different, preferred risk management solution.

In addition, the proposed rule change is designed to mitigate the financial risk associated with complex orders that leg-into the regular market. Specifically, the proposed rule change would limit the legging functionality to complex order with no more than two or three legs, as determined by the Exchange on a class basis. The Exchange represents that it will provide reasonable prior notice via a circular to members that identifies the applicable options classes for which legging is limited to complex orders with two legs and those for which legging is limited to complex order with three legs. The Exchange notes that 85% of all complex orders only have two orders and very few complex orders have more than three legs, thus the vast majority of complex orders would be unaffected by this limitation. The Exchange also opined that market maker liquidity in the regular market may be limited as a result of the potential risk

the Exchange for the individual legs of the complex order, provided the complex order can be executed while maintaining a permissible ratio by such bids and offers.

[6] The Exchange states that it will issue a circular to members identifying the options classes for which legging is limited to complex orders with two legs and those for which legging is limited to complex order with three legs. The Exchange also states that it will provide members with reasonable notice prior to changing the limit applicable to an options class.

[7] Pursuant to ISE Rule 100(a)(37A) and (37B), a Priority Customer Order is an order for the account of a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] For example, if there are multiple complex orders for the same strategy at the same price with four or more legs, they will be executed pursuant to Rule 722(b)(3) (*i.e.,* in time priority or pro-rata bases on size (with or without Priority Customer priority)).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

of offering legging functionality for complex orders with more than three legs (in some cases with more than two legs). In particular, the Exchange notes that market makers may reduce the size of their quotations in the regular market because of the risk of executing the cumulative size of their quotations across multiple options series without an opportunity to adjust their quotes. Thus, the Exchange posits that limiting the legging functionality to orders with no more than three legs (in some cases with no more than two legs) could encourage market makers to add liquidity to the regular market which would in turn benefit investors.

Accordingly, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.[11]

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–ISE–2013–38) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19510 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70131; File No. SR–FINRA–2013–033]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d–1(c)(2))

August 7, 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 July 24, 2013, Financial Industry Regulatory Authority (''FINRA'') 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 FINRA. 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

FINRA is proposing to amend FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) to include additional rule violations eligible for disposition under FINRA's Minor Rule Violation Plan (''MRVP'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA Rule 9216(b) provides procedures for disposition of certain rule violations designated as minor rule violations pursuant to a plan declared effective by the Commission in accordance with Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder. FINRA's MRVP allows FINRA to impose a fine of up to $2,500 on any member or person associated with a member for a minor violation of an eligible rule. FINRA Rule 9217 sets forth the rules eligible for disposition pursuant to FINRA's MRVP. FINRA is proposing to expand the universe of eligible rules as part of an effort to concentrate regulatory resources on higher risk matters: expanded use of the MRVP could free up resources better allocated to high-risk matters because MRVP settlements typically are handled more efficiently and expeditiously.

The purpose of the MRVP is to provide reasonable but meaningful sanctions for minor or technical violations of rules when the conduct at issue does not warrant stronger, reportable disciplinary sanctions. The inclusion of a rule in FINRA's MRVP does not minimize the importance of compliance with such rule, nor does it preclude FINRA from choosing to pursue violations of eligible rules through an Acceptance, Waiver and Consent (''AWC'') or Complaint if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the option to impose an MRVP sanction gives FINRA additional flexibility to administer its enforcement program in the most effective and efficient manner, while still fully meeting FINRA's remedial objectives in addressing violative conduct. For example, MRVP dispositions provide a useful tool for implementing the concept of progressive discipline to remediate misconduct. FINRA will continue to examine and surveil for compliance with eligible rules in a manner consistent with its examination programs and will determine on a case-by-case basis whether disposition pursuant to the MRVP is appropriate.

FINRA conducted a comprehensive review of its rules and examination dispositions to determine the rules it proposes to add to the MRVP. Among other things, FINRA considered (1) rules routinely cited in formal disciplinary actions that are not currently part of the MRVP; (2) rules cited frequently in informal actions; (3) rules comparable to existing rules in the MRVP; and (4) rules included in other self-regulatory organization MRVPs.

The rules proposed for inclusion in the MRVP broadly can be grouped into several categories.

Filings and Notifications

In general, FINRA believes that isolated failures to comply with rules that require periodic reporting, filings or notifications are appropriate for inclusion in the MRVP. At the same time FINRA recognizes that willful, widespread or repeated failures under such eligible rules may be more appropriate for disposition through an AWC or the filing of a Complaint. FINRA notes that the current MRVP includes several such rules. Accordingly, the proposed rule change would add the following rules to the MRVP for violations involving late or incomplete notices or filings: FINRA Rule 2251(a) (Forwarding of Proxy and other Issuer-Related Materials) (failure to timely forward proxy and other issuer-related materials); FINRA Rule 4524 (Supplemental FOCUS Information) (failure to timely file or filing of incomplete reports or information); FINRA Rule 5110(b) (Corporate Financing Rule—

[11] 15 U.S.C. 78f(b)(5)

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Underwriting Terms and Arrangements) (failure to timely file or filing of incomplete documents or information); FINRA Rule 5121(b)(2) (Public Offerings of Securities with Conflicts of Interest) (failure to give timely notification of termination or settlement of public offering or failure to file net capital computation); FINRA Rule 5122(b)(2) (Private Placements of Securities Issued by Members) (failure to timely file private placement documents); FINRA Rule 5190 (Notification Requirements for Offering Participants) (failure to give timely notification of participation in offerings); and FINRA Rule 6760 (Obligation to Provide Notice) (failure to give timely or complete notification concerning offerings of TRACE-Eligible Securities). FINRA believes inclusion of these rules is appropriate, as certain instances of late filings or notifications may constitute minor, technical violations of the applicable rules that can be remediated through the MRVP.

Late Registrations

For many of the same reasons, the proposed rule change also would include in the MRVP the following MSRB and FINRA rules for certain isolated or technical failures to timely register: MSRB Rule G–2 (Standards of Professional Qualification) and MSRB Rule G–3(b)(ii)(D) and (c)(ii)(D) (Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements) (failure to pass qualification examination within 90 days of becoming a principal) [3] and NASD Rule 1021(d) (Registration Requirements) (failure to pass qualification examination within 90 days of acting in a principal capacity). These provisions permit a municipal securities representative or registered representative, as applicable, to temporarily function in a principal capacity, provided such person registers as a principal and passes the appropriate qualification examination within 90 days of acting in such capacity. Typically, these circumstances occur when a registered principal leaves a firm or has an extended absence. FINRA believes MRV disposition may be appropriate in limited circumstances where a representative assumes principal duties but takes more than 90 days to pass the corresponding qualification examination.

Untimely Marking, Transaction Reporting and Other Market Rules

The proposed rule change similarly would add to the MRVP late filing and notification requirements related to market regulation. The current FINRA MRVP includes several such market rules, including, for example, FINRA Rule 4560 (failure to timely file reports of short positions); FINRA Rules 6380A, 6622, 6730 (transaction reporting); FINRA Rule 7450 (OATS reporting); and MSRB Rule G–14 (failure to submit reports). Thus, the proposed rule change would include: Rule 605(a)(1) and (3) of SEC Regulation NMS (Disclosure of Order Execution Information) (failure to timely report or provide complete order execution information); Rule 606 of SEC Regulation NMS (Disclosure of Order Routing Information) (failure to timely disclose or provide complete order routing information); FINRA Rule 6181 (Timely Transaction Reporting) (failure to timely report transactions in NMS securities); and FINRA Rule 6623 (Timely Transaction Reporting) (failure to timely report transactions in OTC and restricted equity securities).

The proposed rule change further would make eligible for MRVP disposition other marking and reporting requirements related to trade and audit data: Rule 200(g) of SEC Regulation SHO (Definition of ''Short Sale'' and Marking Requirements) (failure to accurately mark sell orders of equity securities); FINRA Rule 6182 (Trade Reporting of Short Sales) (failure to accurately mark short sales in NMS stocks); FINRA Rule 6250 (Quote and Order Access Requirements) (failure to comply with quote and order access requirements for FINRA's Alternative Display Facility); FINRA Rule 6624 (Trade Reporting of Short Sales) (failure to accurately mark short sales in OTC Equity Securities); FINRA Rule 7330 (Trade Report Input) (failure to timely and accurately input trade reports into the OTC Reporting Facility); and FINRA Rule 7360 (Audit Trail Requirements) (ongoing obligation to input trade reporting requirements in Rule 7330(d) accurately and completely). In addition, the proposed rule change would add three rules governing the FINRA/NYSE Trade Reporting Facility whose counterpart rules regarding the FINRA/NASDAQ Trade Reporting Facility are already subject to MRV treatment: FINRA Rule 6380B (Transaction Reporting); FINRA Rule 7230B (Trade Report Input); and FINRA Rule 7260B (Audit Trail Requirements).

Rules To Achieve Consistency

In addition to the market rules referenced above, FINRA further proposes to add certain rules to the MRVP to achieve consistency with rules that already are part of the plan. Thus, the proposed rule change would add FINRA Rule 1250(a), the Regulatory Element of FINRA's continuing education requirements. The current MRVP includes FINRA Rule 1250(b), the Firm Element provision of the continuing education requirements, and FINRA believes there is no compelling reason to differentiate with respect to the MRVP minor violations of the regulatory element. Similarly, the proposed rule change further would bring consistency to the enforcement of the MSRB Rules by adding to the MRVP MSRB Rule G–3(h) (Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements) (failure to comply with the continuing education requirements) to include in the MRVP both the Firm and Regulatory Elements of the MSRB's equivalent continuing education requirements rule. The proposed rule change also seeks consistency by adding MSRB Rule G–21 (Advertising) to the MRVP, since the FINRA communications with the public counterparts, FINRA Rules 2210, 2212, 2213, 2215, 2216 and NASD Interpretive Material 2210–2, already are subject to MRVP disposition.

FINRA Rule 9217 currently states that ''[f]ailures to provide or update contact information as required by FINRA or NASD rules'' may be resolved pursuant to the MRVP. Accordingly, FINRA proposes to add NASD Rule 1150 (Executive Representative) (failure to review and update executive representative designation and contact information) and NASD Rule 1160 (Contact Information Requirements) to the MRVP. For the same reason, FINRA also proposes to add MSRB Rules G–40(a) and (c) (Electronic Mail Contacts), which require each broker, dealer or municipal securities dealer to designate and update electronic mail contact information for communications with the MSRB, and FINRA Rule 4370(f) (Business Continuity and Emergency Contact Information), which requires a member to report to FINRA emergency contact information and to designate emergency contact persons. Rule 4370(f)(2) further requires member to promptly update such information in the event of any material change in accordance with NASD Rule 1160. FINRA also proposes to include in the MRVP other provisions of Rule 4370, which are discussed below.

[3] The proposed rule change includes both MSRB Rule G–2 and G–3 because the two are linked. Rule G–3 states that no broker, dealer or municipal securities dealer ''shall be qualified for the purposes of Rule G–2'' unless the requirements set forth in Rule G–3 are met. FINRA typically charges a violation of both rules where there is a failure to comply with the requirements of Rule G–3.

Recordkeeping

The current MRVP includes violations of FINRA Rule 4510 Series (Books and Records Requirements) for failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules and regulations and statements of policy promulgated thereunder, and with FINRA rules. Rule 4511 requires firms to preserve for at least six years those FINRA books and records for which there is no specified period under FINRA rules or applicable Exchange Act rules. Otherwise, the rule mandates compliance with the books and record requirements under FINRA rules, the Exchange Act and the applicable Exchange Act rules. The proposed rule change would add to the MRVP specific SEC and MSRB rules that require records to be made and preserved: Exchange Act Rule 17a–3(a) (Records to Be Made By Certain Exchange Members, Brokers and Dealers); Exchange Act Rule 17a–4 (Records to Be Preserved By Certain Exchange Members, Brokers and Dealers); MSRB Rule G–8 (Books and Records to Be Made By Brokers, Dealers and Municipal Securities Dealers); and MSRB Rule G–9 (Preservation of Records). FINRA typically charges recordkeeping violations under both FINRA Rule 4511 or MSRB Rule G–9 and the applicable Exchange Act rules. FINRA includes the Exchange Act rules because those rules have greater specificity than the self-regulatory organization rules. In addition, the violation often involves a record specified in the Exchange Act rules, such as an order ticket. Under such circumstances, FINRA believes it appropriate to charge a violation of the specific Exchange Act provision, as well as the more general FINRA rule that requires compliance with the Exchange Act books and records rules.

Supervisory Procedures Regarding MRVP Rules

The current MRVP includes NASD Rule 3010(b) (Supervision; Written Procedures), but only with respect to failures to timely file reports required of a firm subject to the ''Taping Rule''—a requirement to, among other things, tape record conversations of its registered persons and file with FINRA periodic reports on supervision of telemarketing activities of its registered persons. The proposed rule change would expand the MRVP to include any violation of NASD Rule 3010(b) (Supervision; Written Procedures) for failure to maintain adequate written supervisory procedures with respect to the provision of a rule that is eligible for MRV disposition. Thus, for example, FINRA Rules 7440 and 7450 currently are included in FINRA's MRVP and require recording and transmission of Order Audit Trail System (''OATS'') data. NASD Rule 3010(b) requires members with such data to have written supervisory procedures reasonably designed to achieve compliance with the OATS rules. The proposed rule change would allow FINRA to resolve as an MRV a failure to maintain adequate written supervisory procedures with respect to compliance with OATS rules, whether or not there is a violation of the OATS rules themselves. The proposed rule change would also include the parallel MSRB Rule G–27 (Supervision) to the same extent. FINRA believes inclusion of these provisions is logically consistent with the purposes of the MRVP: If the potential underlying violation is eligible for MRV disposition, the procedures to require compliance with that rule also should be eligible for such disposition.

Options

FINRA Rule 2360(b)(5) (Reporting of Options Positions) requires, among other things, members to report each account in which a member has an interest that has established an aggregate position of 200 or more option contracts. The proposed rule change makes this rule eligible for disposition under the MRVP for, among other things, technical or manual inputting problems that in the judgment of FINRA do not materially affect the market. FINRA notes that other provisions of FINRA's options reporting rules are eligible for MRVP disposition [4] and that options reporting requirements are part of the MRVP for almost all of the options exchanges,[5] thus including them in FINRA's plan would promote greater consistency across the markets. The need for such consistency is heightened because FINRA is party to an agreement allocating regulatory responsibility for options reporting rules.[6]

Other Rules

Finally, the proposed rule change would make violations of several other rules eligible for disposition under the MRVP. With respect to each rule, FINRA believes that a minor violation, depending on the circumstances, could appropriately be remediated under the terms of the MRVP without compromising investor protection.

Exchange Act Rule 10b–10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction, including but not limited to information concerning the date and time of the transaction, the number of shares bought or sold, the price or average price of the transaction, the capacity in which the member is acting in connection with the transaction, and the nature of the remuneration received or to be received by the member. FINRA has observed circumstances where members have committed minor violations of the rule by failing to fully or accurately disclose such information. For example, FINRA has seen circumstances where a broker-dealer mistakenly reported the ''average price'' of a transaction as the ''price'' or mismarked a principal transaction as an agency transaction. Depending upon the specific facts and circumstances of the transaction, including the sophistication of the customer and the nature of the information that was not disclosed or improperly disclosed, FINRA believes an MRV could be an appropriate disposition.

FINRA Rule 4360(b) (Fidelity Bonds) requires a member to maintain minimum fidelity bond coverage commensurate with its net capital requirements. MSRB Rule G–6 (Fidelity Bonding Requirements) requires a broker, dealer or municipal securities dealer to maintain the minimum fidelity bond coverage that is required by the national securities association with which it is registered. FINRA has observed instances where a member had fidelity bond coverage but less than the required coverage. FINRA believes MRV disposition may be appropriate in such circumstances, depending on the reason for the shortfall and the magnitude and

[4] The MRVP currently covers violations of FINRA Rule 2360(b)(3) regarding position limits, (b)(4) regarding exercise limits and (b)(23) regarding tendering procedures for exercise of options.

[5] *See* NYSE MKT Rule 590(g) (referencing violations of reporting rules including Rule 906 (Reporting of Options Positions)); NYSE Arca Options Rule 10.12(h)(23); BATS Rule 25.3(b); Nasdaq Options Rule Chapter X, Section 7(d); BX Options Rule Chapter X, Section 7(d); CBOE Rule 17.50(g)(15); C2 Rule Chapter 17 (which incorporates the rules contained in CBOE Chapter XVII); ISE Rule 1614(d)(10).

[6] *See* Securities Exchange Act Release No. 68362 (December 5, 2012) 77 FR 73719 (December 11, 2012) (Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, the Chicago Board Options Exchange, Incorporated, the International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., and Miami International Securities Exchange, LLC concerning options-related market surveillance).

duration of the failure. For example, a modest shortfall in coverage based on a miscalculation of net capital that was quickly discovered and remedied might be appropriate for an MRV disposition.

MSRB Rule G–10 (Delivery of Investor Brochure) requires a broker, dealer or municipal securities dealer to deliver a copy of an investor brochure to a customer promptly after receiving a complaint from the customer. As with other provisions referenced above and those already part of FINRA's MRVP involving a late filing or delivery, FINRA believes that a failure to timely deliver such brochure may be appropriate for MRV disposition under certain factual circumstances; e.g., where a violation is not widespread or willful.

FINRA By-Laws Schedule A, Sec. 1(b) (Member Regulatory Fees) assesses on members a Trading Activity Fee for the sale of covered securities. The provision defines covered securities, exempts certain transactions, sets forth fee rates and provides that members shall report the volume of applicable sales in a manner prescribed by FINRA. FINRA has observed that firms sometimes fail to make accurate payment of the Trading Activity Fee based on an inadvertent miscalculation of the fee or failure to apply the fee to the proper universe of trades. FINRA has also observed instances where a firm has inadvertently failed to accurately report the volume of sales of covered securities, thus impacting the proper calculation of the fee. FINRA believes such circumstances may be appropriate for MRVP disposition and therefore has included the By-Law provision in the proposed rule change.

FINRA Rule 2266 (SIPC Information) requires members to provide customers with written notification of the availability of SIPC information at account opening and annually thereafter. FINRA may consider isolated failures to satisfy this requirement without customer harm to be minor in nature and therefore appropriate for an MRV.

FINRA Rules 3160(a)(1), (3), (4) and (5) (Networking Arrangements Between Members and Financial Institutions) set forth standards of conduct for conducting broker-dealer services on or off the premises of a financial institution pursuant to a networking arrangement. These provisions specify: the setting in which a member may conduct broker-dealer services on the premises of a financial institution; the disclosure required to inform the customer that the broker-dealer products sold are not guaranteed or federally insured; the content requirements of communications with the public; and the requirement to promptly notify the financial institution if any associated person of a member employed by the institution has been terminated for cause. FINRA believes there are several potential factual scenarios where a minor violation could occur under these provisions. For example, Rule 3160(a)(3)(B) requires a member to disclose orally, in addition to written disclosure, that the securities products purchased are not guaranteed or federally insured. FINRA could foresee a circumstance where either written or oral disclosure is provided rather than both and believes an MRV may be appropriate under such facts. FINRA notes that the proposed rule change excludes Rule 3160(a)(2), which sets forth the requirement that a written agreement govern any networking arrangement and include key broker-dealer obligations pursuant to Rule 701 of SEC Regulation R and ensure access to the financial institution's premises by broker-dealer supervisory personnel and regulators from FINRA and the SEC.

FINRA Rules 4370(a), (b), (c) and (e) (Business Continuity Plans and Emergency Contact Information) require a member to create, maintain and update a written business continuity plan and to disclose the elements of the plan to customers at account opening, on its Web site and upon customer request. The provisions allow for flexibility in the design of the plan but also include a number of minimum elements. While FINRA recognizes the importance of an effective business continuity plan, we also have seen minor violations of the provisions that may not implicate the overall effectiveness of a plan. For example, FINRA has observed instances where members have failed for a short duration to timely update their plans in violation of Rule 4370(b) or failed to address one of the ten elements set forth in Rule 4370(c). FINRA could also envision circumstances where a member failed to address an existing relationship with another broker dealer in violation of Rule 4370(a) or failed in an isolated circumstance to timely provide disclosure about its business continuity plan after receiving a request from a customer under Rule 4370(e). FINRA believes these examples may be appropriate for MRV disposition. However, FINRA does not believe MRV disposition would be appropriate where a member has no business continuity plan or procedures as required by Rule 4370(a).

FINRA has not proposed to include Rule 4370(d) for MRVP eligibility. That provision requires a member to designate a member of senior management to approve the plan and be responsible for an annual review of it, and FINRA does not foresee any circumstances where a violation of those requirements would be appropriate for MRVP disposition.

FINRA Rule 5121(a) (Public Offerings of Securities with Conflicts of Interest) sets forth requirements for participation in public offerings of a member's securities where a conflict of interest is present. The rule requires prominent disclosure in the prospectus, offering circular or similar document of the nature of the conflict of interest, the name of a qualified independent underwriter that has participated in the preparation of the offering documents and the role and responsibilities of that independent underwriter. FINRA believes that under certain facts, a failure to prominently disclose these items—e.g., disclosing them in smaller font—may constitute a minor violation appropriate for MRVP disposition.

FINRA Rule 7430 (Synchronization of Member Business Clocks) requires members to synchronize their business clocks for the purposes of recording the date and time of events that must be reported pursuant to FINRA By-Laws and rules. FINRA believes that isolated violations where certain business clocks fall out of synch due to software glitches or other technical reasons may be appropriate to resolve as an MRV, and therefore FINRA has proposed to include the rule in the MRVP.

FINRA reiterates that inclusion of a rule in the MRVP does not mean that all violations of that rule must be treated pursuant to the MRVP. FINRA staff maintains the discretion to handle any violation of such rules through AWCs or Complaints with the full range of applicable sanctions.[7] Similarly, members and associated persons maintain the right to a hearing, with all the same procedural rights accorded all formal disciplinary proceedings, instead of accepting a Minor Rule Violation.

The implementation date will be the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to

[7] FINRA does not intend to develop a formula as to when a matter must be handled pursuant to the MRVP, as opposed to informal action, or when an otherwise eligible MRVP matter would be handled through an AWC or the filing of a complaint. The disposition of any matter will depend on the particular facts and circumstances.

[8] 15 U.S.C. 78*o*–3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA further believes that the proposed rule change is consistent with Sections 15A(b)(2) and (b)(7) of the Act,[9] which require that FINRA enforce and provide appropriate discipline for violation of FINRA rules and applicable federal securities laws, rules and regulations. FINRA believes that adopting the proposed rule change will strengthen FINRA's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

In addition, FINRA's MRVP, as amended by this proposal, provides a fair procedure for disciplining members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1) of the Act.[10] The MRVP does not preclude a member or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will allow for a quicker, more efficient means to resolve minor violations of the eligible rules, potentially lessening the burden on firms in those circumstances where, absent the rule's inclusion in the MRVP, a more resource-intense formal proceeding might ensue.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–033 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–FINRA–2013–033. 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–FINRA–2013–033, and should be submitted on or before September 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19509 Filed 8–12–13; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78*o*–3(b)(2) and 78*o*–3(b)(7).

[10] 15 U.S.C. 78*o*–3(b)(8) and 78*o*–3(h)(1).

[11] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 13711 and # 13712]**

### North Carolina Disaster # NC–00054

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 08/06/2013.

*Incident:* Severe storms and flooding.

*Incident Period:* 07/12/2013 through 07/27/2013.

**DATES:** *Effective Date:* 08/06/2013.

*Physical Loan Application Deadline Date:* 10/07/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/06/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Catawba

Contiguous Counties: North Carolina

Alexander, Burke, Caldwell, Iredell, Lincoln

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 3.750 |
| Homeowners without Credit Available Elsewhere | 1.875 |
| Businesses with Credit Available Elsewhere | 6.000 |

| | Percent |
|---|---|
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.875 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.875 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.875 |

The number assigned to this disaster for physical damage is 13711 6 and for economic injury is 13712 0.

The State which received an EIDL Declaration # is North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 6, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–19498 Filed 8–12–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 13698]**

### Colorado Disaster # CO–00055 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Colorado, dated 08/06/2013.

*Incident:* Royal Gorge Fire.

*Incident Period:* 06/11/2013 through 06/16/2013.

*Effective Date:* 08/06/2013.

*EIDL Loan Application Deadline Date:* 05/06/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fremont

Contiguous Counties: Colorado:

Chaffee, Custer, El Paso, Park, Pueblo, Saguache, Teller

The Interest Rates are:

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-profit Organizations without Credit Available Elsewhere | 2.875 |
| The number assigned to this disaster for economic injury is | 136980 |
| The State which received an EIDL Declaration # is COLORADO. | |

(Catalog of Federal Domestic Assistance Number 59002)

Dated: August 6, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–19497 Filed 8–12–13; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No FAA–2013–0485]**

### Availability of Draft Advisory Circular (AC) 90–106A and AC 20–167A

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Availability for Comment

**SUMMARY:** This notice announces the availability of draft Advisory Circular (AC) 90–106A, *Enhanced Flight Vision Systems* and draft AC 20–167A, *Airworthiness Approval of Enhanced Vision System, Synthetic Vision System, Combined Vision System, and Enhanced Flight Vision System Equipment* documents that were developed by the FAA. These documents are available for public review, download, and comment.

**DATES:** Send comments on or before October 15, 2013.

**ADDRESSES:** Send comments identified by docket number FAA–2013–0485 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning draft AC 90–106A, contact Terry King, Flight Technologies and Procedures Division, AFS–400, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4586; email *Terry.King@faa.gov.* For technical questions concerning draft AC 20–167A, contact Trent Prange, Aircraft Engineering Division, AIR–100, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4866; email *Trent.Prange@faa.gov.* For legal questions concerning this action contact Paul G. Greer, Office of the Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Paul.G.Greer@faa.gov.*

**SUPPLEMENTARY INFORMATION:** On June 11, 2013, the FAA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** titled *Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS)*

*and to Pilot Compartment View Requirements for Vision Systems* (78 FR 34935–34958) (Docket No.: FAA–2013–0485; Notice No. 1209). AC 90–106A, *Enhanced Flight Vision Systems,* and AC 20–167A, *Airworthiness Approval of Enhanced Vision System, Synthetic Vision System, Combined Vision System, and Enhanced Flight Vision System Equipment,* have been revised to incorporate the operational and airworthiness proposals contained in the NPRM.

AC 90–106A provides information about the operating rules pertaining to EFVS operations and explains how to obtain authorization to conduct EFVS operations. AC 20–167A provides guidance on airworthiness approvals of EFVS, Enhanced Vision System (EVS), Synthetic Vision System (SVS), and Combined Vision System (CVS) equipment installation.

AC 90–106A is for persons operating aircraft under Title 14 of the Code of Federal Regulations (14 CFR) part 91, 121, 125, 129, or 135 who seek approval to use an EFVS in lieu of natural vision to either descend below decision altitude/decision height (DA/DH) or minimum descent altitude (MDA) to 100 feet height above touchdown zone elevation (HAT) from a straight-in Instrument Approach Procedure (IAP), or descend below DA/DH to touchdown and rollout from a straight-in precision IAP or a straight-in IAP with approved (published) vertical guidance.

AC 90–106A applies to all EFVS operations that are conducted to 100 feet HAT and all EFVS operations that would be conducted to touchdown and rollout under proposed §§ 91.176, 121.651, 125.381, 129, and 135.225. AC 90–106A also applies to the proposed EFVS provisions of §§ 121.613, 121.615, 125.361, 125.363, and 135.219 for dispatch, flight release, and takeoff under IFR when the reported or forecast visibility at the destination airport is below authorized minimums. In addition, AC 90–106A applies to the proposed EFVS provisions of §§ 121.651, 125.325, 125.381, and 135.225 for initiating or continuing an approach when the destination airport weather is below authorized visibility minimums for the runway of intended landing. This AC also contains information about the proposed requirements for pilot training under § 61.31 and the proposed recent flight experience and proficiency requirements under § 61.57.

AC 90–106A provides information on the regulatory background of EFVS operations, the levels of EFVS operations which can be currently approved, the concept of operation associated with each level of EFVS operation, and how to obtain operational approval to conduct EFVS operations. AC 90–106A also provides information on the regulatory requirements for conducting EFVS operations, including operating, equipment, training, recent flight experience, proficiency, dispatch and flight release, and maintenance requirements.

Public comments on draft AC 90–106A should be submitted on the comment form titled *Comment Form for Advisory Circular (AC) 90–106A, Enhanced Flight Vision Systems.* An electronic copy of this form can be downloaded from the docket.

AC 20–167A is for airplane and rotorcraft manufacturers, modifiers, and type certification engineers seeking certification or installation guidance for their visual display system. Sections 23.773, 25.773 27.773 and 29.773 address vision systems using a transparent display surface located in the pilot's outside view, such as a head-up-display, head-mounted display, or other equivalent display. Such ''vision systems'' include any EVS, EFVS, SVS, or CVS.

AC 20–167A applies to all applicants for a new type certificate (TC), an amended type certificate (ATC), or a supplemental type certificate (STC) who install vision systems and equipment. The method of compliance described in AC 20–167A can be used to obtain a TC, STC, or ATC for an airplane or rotorcraft equipped with EVS, EFVS, SVS, or CVS equipment.

AC 20–167A describes system performance, provides methods, procedures, and practices acceptable to the FAA for complying with regulations, and addresses specific installation guidance for vision systems on an airplane or on rotorcraft. This AC also provides EFVS safety standards and sample flight test considerations for EFVS operations conducted to 100 feet HAT and for EFVS operations conducted to touchdown and rollout.

Public comments on the available drafts should be submitted on the forms provided. Electronic copies of these forms can be downloaded from the docket: FAA–2013–0485.

Both ACs provide methods, procedures, and practices acceptable to the FAA for complying with regulations. They are a means, but not the only means, of obtaining approval to conduct EFVS operations and to install and obtain airworthiness approval for vision systems. These ACs do not alter regulatory requirements.

Issued in Washington, DC on August 7, 2013.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2013–19478 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013- 0108]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption, request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 5 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

**DATES:** Comments must be received on or before September 12, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2013–0108 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Elaine Papp, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 5 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

## Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0108'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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. FMCSA may issue a final rule at any time after the close of the comment period.

## Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0108'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

## Summary of Applications

*Erik Fleiner*

Mr. Fleiner is a 25 year-old class A commercial driver's license holder in Nevada. He has a history of seizures and has remained seizure free for at least 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 10 years. If granted the exemption, he would like to continue to drive a CMV. His physician states he is supportive of Mr. Fleiner receiving an exemption.

*Gary Freeman*

Mr. Freeman is a 48 year-old class A commercial driver's license holder in Wisconsin. He has a history of seizures and has remained seizure free for at least 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 7 years. If granted the exemption, he would like to continue to drive large trucks with trailers. He owns and operates a transport business and would

like to continue to drive for his business. His physician states he is supportive of Mr. Freeman receiving an exemption.

*David Kestner*

Mr. Kestner is a 28 year-old driver in Virginia. He has a history of epilepsy and has remained seizure free for 9 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 5 years. If granted the exemption, he would like to drive a tractor trailer. His physician states he is supportive of Mr. Kestner receiving an exemption.

*Paul G. Kane*

Mr. Kane is a 56 year-old driver in Massachusetts. He has a history of seizures and has remained seizure free since December 2009. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a truck over 10,001 lbs. His physician states he is supportive of Mr. Kane receiving an exemption.

*Chad Smith*

Mr. Smith is a 36 year-old driver in Massachusetts. He has a history of seizures and has remained seizure free for at least 15 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 6 years. If granted the exemption, he would like to continue to transport automobiles from auctions to dealers. His physician states that he is supportive of Mr. Smith receiving an exemption.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: August 6, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–19610 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2010–0005–N–17]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than October 15, 2013.

**ADDRESSES:** Submit written comments on the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0590.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will be submittiing for clearance by OMB as required under the PRA:

*Title:* Alleged Violation Reporting Form.

*OMB Control Number:* 2130–0590.

*Abstract:* The Alleged Violation Reporting Form is a response to section

307(b) of the Rail Safety Improvement Act of 2008, signed into law by President George W. Bush on October 16, 2008, which requires Federal Railroad Administration (FRA) to ''provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration.'' The Alleged Violation Reporting Form allows the general public to submit alleged violations directly to FRA. The form's goal is to allow FRA to collect information necessary to investigate the alleged violation and to provide follow up correspondence with the submitting party.

The Alleged Violation Reporting Form collects the name, phone number and email of the person submitting the alleged violations; the preferred method by which to contact the person; the railroad or company name that committed the alleged violation, the date and time the alleged violation occurred; the location the alleged violation occurred; and details about the violation. All information is voluntary. FRA will collect the information via a form on the FRA public Web site. FRA may share the information collected with FRA employees, State DOT partners, and law enforcement agencies.

*Form Number(s):* FRA F 6180.151.

*Affected Public:* U.S. Residents.

*Respondent Universe:* 1,000 individuals.

*Frequency of Submission:* On occasion.

| Form number | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| Alleged Violation Reporting Form (Form FRA F 6180.151). | 1,000 American Residents | 400 forms ..... | 10 minutes ..... | 67 hours |

*Total Responses:* 400.

*Estimated Total Annual Burden: 67* hours.

*Status:* Regular Review of a Currently Approved Information Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 6, 2013.

**Rebecca Pennington,**

*Chief Financial Officer.*

[FR Doc. 2013–19571 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2010–0005–N–16]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 28, 2013.

**DATES:** Comments must be submitted on or before September 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 28, 2013, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR that the agency was seeking OMB approval. 78 FR 32005. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden for the ICRs that will be submitted for clearance by OMB as required by the PRA.

*Title:* Notice of Funding Availability and Solicitation of Applications for Grants under the Railroad Safety Technology Grant Program.

*OMB Control Number:* 2130–0587.

*Type of Request:* Regular Approval of a Currently Approved Information Collection.

*Affected Public:* 1,525 Railroads/ Vendors/Universities.

*Abstract:* The Rail Safety Technology Program is a program authorized under the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432; October 16, 2008). The program was directed by Congress and passed into law in the aftermath of a series of major rail accidents that culminated in an accident at Chatsworth, California, in 2008. Twenty-five people were killed and 135 people were injured in the Chatsworth accident. This event turned the Nation's attention to rail safety and the possibility that new technologies, such as PTC, could prevent such accidents in the future. The RSIA ordered installation of PTC by all Class I

railroads on any of their mainlines carrying poisonous inhalation hazard (PIH) materials and by all passenger and commuter railroads on their main lines not later than December 31, 2015.

As part of the RSIA, Congress originally provided $50 million to FRA to award, in one or more grants, to eligible projects by passenger and freight rail carriers, railroad suppliers, and State and local Governments. Presently, there is $550,000 remaining of the original funds that FRA plans to fund two projects with. Funds will be awarded to projects that have a public benefit of improved railroad safety and efficiency, with priority given to projects that make PTC technologies interoperable between railroad systems; projects that accelerate the deployment of PTC technology on high-risk corridors, such as those that have high volumes of hazardous material shipments; and for projects over which commuter or passenger trains operate, or that benefit both passenger and freight safety and efficiency.

Funds provided under this grant program may constitute a maximum of 80 percent of the total cost of a selected project, with a minimum of 20 percent of costs funded from other sources. The funding provided under these grants will be made available to grantees on a reimbursement basis. FRA anticipates awarding grants to two eligible participants. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated technology development.

*Form Number(s):* FRA F 6180.146; SF–269; SF–270.

*Annual Estimated Burden Hours:* 5,337 hours.

*OMB Control Number:* 2130–0589.

*Abstract:* Section 202 of the Rail Safety Improvement Act (RSIA) of 2008 required the Secretary of Transportation (delegated to the Federal Railroad Administrator by 49 CFR 1.49) to identify the 10 States that have had the most-highway-rail grade crossing collisions, on average, over the past three years, and to require those States to develop State highway-rail grade crossing action plans, within a reasonable period of time, as determined by the Secretary. Section 202 of the law further provided that these plans must identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and must focus on crossings that have experienced multiple accidents or are at high risk for such accidents.

Section 202 also provided the following: The Secretary will provide assistance to the States in developing and carrying out such plans, as appropriate; the plans may be coordinated with other State or Federal planning requirements; the plans will cover a period of time determined to be appropriate by the Secretary; and the Secretary may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501, to a State identified under this section, on the development of such State's plan.

Lastly, Section 202 provided a review and approval process under which, not later than 60 days after the Secretary receives such a State action plan, the Secretary must review and either approve or disapprove it. In the event that the proposed plan is disapproved, Section 202 indicates that the Secretary must notify the affected State as to the specific areas in which the proposed plan is deficient, and the State must correct all deficiencies within 30 days following receipt of written notice from the Secretary.

FRA uses the collection of information to ensure that States meet the Congressional mandate and devise and implement suitable plans to reduce/eliminate troublingly high numbers of highway-rail grade collisions in their States. FRA reviews grade these crossing action plans and grade crossing action plan revisions to ensure that these plans include the following: (1) Identify specific solutions for improving safety at highway-rail grade crossings, including highway-rail grade crossing closures or grade separations, (2) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents, and (3) Cover a five-year period of time.

*Form Number(s):* N/A.

*Annual Estimated Burden Hours:* 40 hours.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov*.

*Comments are invited on the following:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 7, 2013.

**Rebecca Pennington,**

*Chief Financial Officer.*

[FR Doc. 2013–19573 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2013–0002–N–15]**

### Proposed Agency Information Collection Activities; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on May 17, 2013.

**DATES:** Comments must be submitted on or before September 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on

information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 17, 2013, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which the agency was seeking OMB approval. 78 FR 29203. FRA received no comments in response to this notice.

Before OMB decides whether to approve a proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection request (ICR) and the expected burden, and will be submitted for clearance by OMB as required by the PRA.

*Title:* Electronic Device Distraction: Test of Peer to Peer Intervention Combined with Social Marketing.

*OMB Control Number:* 2130—NEW.

*Type of Request:* Regular approval of a new collection of information.

*Affected Public:* Railroad Employees.

*Abstract:* Operating railroad equipment while being distracted by the use of electronic devices (e.g., phones, game consoles, personal computers, etc.) is known to be a factor in some accidents and suspected of being the cause of many others in the railroad industry. It is also known that such use is dangerous, as evidenced by several high profile accidents in the railroad industry, and by research on distraction in other transportation modes. Consequently, the Department of Transportation (DOT) and the Federal Railroad Administration (FRA) have a keen interest in devising counter measures to reduce the incidence of electronic device distraction (EDD) in the railroad industry. One promising approach is to combine peer-to-peer conversations with an effort to change the culture with respect to the acceptability of EDD. FRA is initiating a small scale test of this approach at the Harrisburg Yard of the Norfolk Southern Railroad. As part of its efforts, an evaluation is taking place to determine if the approach works and what will be needed to scale it up to other sites in the railroad industry. As part of the test, it will be necessary to conduct face-to-face interviews with three respondent groups. They are: (1) Members of participating crafts and supervisors at the pilot site; (2) Norfolk Southern personnel involved in implementing and managing the pilot; (3) Project team members in the organizations contracted to assist with the pilot. The majority of interviews will be face-to-face.

*Form Number(s):* FRA F 6180.160.

*Annual Estimated Burden Hours:* 41 hours.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent electronically via email to the Office of Information and Regulatory Affairs (OIRA) at the following address: *oira_submissions@omb.eop.gov*.

*Comments are invited on the following:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 7, 2013.

**Rebecca Pennington,**

*Chief Financial Officer.*

[FR Doc. 2013–19572 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2013–0090]**

### Reports, Forms, and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration, DOT

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under regulations in 49 CFR parts 591, 592, and 593 that pertain to the importation of motor vehicles and items of motor vehicle equipment that are subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

**DATES:** Comments must be received on or before October 15, 2013.

**ADDRESSES:** You may submit comments [identified by DOT Docket No. NHTSA–2013- ] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

*Instructions:* All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for assessing the dockets. Alternately, you may visit in person the Docket Management Facility at the street address listed above.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance (NVS–223), National Highway Traffic Safety Administration, West Building—4th Floor- Room W43–481, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:**

**Prior Approval**

On November 30, 2010, NHTSA submitted to OMB a request for the extension of the agency's approval (assigned OMB Control No. 2127–0002) of the information collection that is incident to NHTSA's administration of the vehicle importation regulations at 49 CFR Parts 591, 592, and 593. On January 19, 2011, OMB notified NHTSA that it had approved this extension request through January 31, 2014. That approval was based on NHTSA submissions identifying information being collected on an annual basis from 63,818 respondents, expending 40,764 hours of effort, at a cost of $1,591,243. NHTSA wishes to file with OMB a request for that agency to extend its approval for an additional three years.

**Changes in Program**

Since the information collection associated with NHTSA's importation program was last approved by OMB, some changes have taken place that impact the information collection and the assessment of its burden on affected members of the public. The volume of vehicles at least 25 years old imported without regard to their compliance with the Federal motor vehicle safety standards (FMVSS) under Box 1 on the HS–7 Declaration form has increased by more than 40 percent, from roughly 8,900 vehicles in 2009 to nearly 13,000 vehicles in 2012. There has been a 75 percent increase in the volume of vehicles conforming to the FMVSS that are imported under Box 2A, from 3.2 million in 2009 to nearly 5.6 million in 2012. The volume of vehicles not originally manufactured to the FMVSS that are imported by registered importers under Box 3 has increased nearly threefold, from 10,700 vehicles in 2009, to over 30,000 vehicles in 2012. During the same period, a forty percent increase has occurred in the volume of vehicles at least 25 years old that can be imported without regard to their compliance with applicable FMVSS, from nearly 9,000 to almost 13,000 vehicles. There has been a 60 percent decrease in the volume of vehicles imported for export only under Box 4, from nearly 50,000 vehicles in 2009 to slightly more than 20,000 in 2012. The volume of nonconforming vehicles temporarily imported for research or demonstration purposes under Box 7 has increased by 50 percent, from 4,000 vehicles in 2009 to 6,000 in 2012. Finally, the volume of vehicles not originally manufactured for use on public roads that are declared as off-road vehicles not subject to the FMVSS under Box 8 has more than tripled, from less than 100,000 in 2009 to 326,000 in 2012.

The focus of NHTSA's importation program has traditionally been on vehicles that were not originally manufactured to comply with all applicable FMVSS. These vehicles must be imported by a registered importer (RI) under bond to ensure that the vehicles are brought into compliance with applicable standards following importation. Nonconforming vehicles are entered under Box 3 on the HS–7 Declaration form. In calendar year 2002, 212,210 nonconforming vehicles were imported under Box 3. Over 97 percent of those vehicles were imported from Canada. In 2003, after the U.S. dollar began to weaken against the Canadian dollar, the volume of nonconforming vehicle imports under Box 3 was reduced by more than half, to 97,337 vehicles. The trend accelerated over the next five years, with 43,648 vehicles imported under Box 3 in 2004, 12,642 imported in 2005, 10,953 imported in 2006, 7,470 imported in 2007, and 6,311 imported in 2008. After the U.S. dollar had gained some strength against the Canadian dollar, the volume of imports under Box 3 increased to 10,752 vehicles in 2009, and continued to increase to 18,010 vehicles in 2010, 22,733 vehicles in 2011, and 30,138 in 2012.

When NHTSA last requested OMB approval for the information collection associated with the vehicle importation program, the agency estimated that 8,200 nonconforming vehicles would be imported on an annual basis under Box 3, for which HS–7 Declaration forms and HS–474 DOT Conformance bonds would have to be furnished. The agency estimated that it would take five minutes to complete each HS–7 Declaration form, and six minutes to complete each HS–474 DOT Conformance bond, for a total expenditure of 1,503 hours to complete these forms. Given the continued rise in nonconforming vehicle imports under Box 3 in recent years, future projections should assume an average of 23,600 vehicle imports per year. Relying on this figure, the hour burden associated with the completion of paperwork for these vehicles would be close to 1,503 hours (0.08333 hours to complete each HS–7 × 23,600 vehicles = 1,967 hours; 0.1 hours to complete each HS–474 × 23,600 vehicles = 2,360 hours; 1,967 + 2,360 = 4,327 hours). This represents nearly a 300 percent increase in burden hours associated with these entries when compared to the figures used when OMB approval was last obtained.

**Scope of Accounting for Burdens**

In this document, the agency has not focused exclusively on vehicles imported under the RI program, but has instead made a concerted effort to quantify the hour burden associated with the completion of paperwork for vehicles and equipment items imported in any legitimate way under NHTSA's regulations. As a consequence, we are providing particular information on the paperwork burden associated with the importation of conforming motor vehicles; the temporary importation of nonconforming vehicles for personal use by nonresidents and by foreign diplomatic and military personnel; the temporary importation of nonconforming vehicles for purposes of research, investigations, demonstrations or training, and other similar purposes; the importation of vehicles that are not primarily manufactured for on-road use; and other entry categories permitted under the agency's regulations. In addition, we have attempted to account for all forms, whether required or optional, and other types of information solicitations associated with vehicle and equipment importation that appear on the agency's Web site and in newsletters and other informational media that we employ to inform RIs and others of our requirements. Accounting for all paperwork burdens in this manner, we project that a total of 61,882 hours will be expended each year to complete paperwork associated with all aspects of NHTSA's program that regulates the importation of motor vehicles and equipment items subject to the FMVSS.

**Issues for Comments to Address**

Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Solicitation of Comments**

In compliance with these requirements, NHTSA is requesting public comment on the following proposed collection of information:

*Title:* Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.

*Type of Request:* Extension of a Currently Approved Collection.

*OMB Control Number:* 2127–0002.

*Affected Public:* Importers of vehicles and regulated items of motor vehicle equipment.

*Requested Expiration Date of Approval:* January 31, 2017.

*Summary of Collection of Information—*

1. Declaration requirement for the importation of motor vehicles and regulated items of motor vehicle equipment: NHTSA's regulations at 49 CFR part 591 provide that no person shall import a motor vehicle or regulated item of motor vehicle equipment (e.g., tires, rims, brake hoses, brake fluid, seat belt assemblies, lighting equipment, glazing (i.e., windshield and window glass), motorcycle helmets, child restraints, compressed natural gas containers (used as part of a vehicle fuel system and not for the purpose of transporting natural gas), reflective triangular warning devices, rear impact guards for trailers, and platform lift systems for the mobility impaired)unless the importer files a declaration. See 49 CFR 591.5. This declaration is filed with U.S. Customs and Border Protection (Customs) on a paper copy of the HS–7 Declaration form, or, if the entry is made by a Customs House Broker, it can be made electronically using Customs' Automated Broker Interface (ABI) system. The HS–7 Declaration form has 14 boxes, each of which identifies a lawful basis for the importation of a motor vehicle or equipment item into the United States.

a. Importation of vehicles at least 25 years old or equipment not subject to the safety standards under Box 1: A motor vehicle at least 25 years old can be lawfully imported without regard to its compliance with the FMVSS. So too can an equipment item manufactured on a date when no applicable FMVSS was in effect. These vehicles and equipment items are declared under Box 1 on the HS–7 Declaration form. In calendar year 2010, 7,752 vehicles were imported under Box 1. In 2011, 7,696 vehicles were imported, and in 2009, the volume of imports increased to 12,677 vehicles. Based on an average of these figures, the agency projects that roughly 9,375 vehicles will be imported each year under Box 1 over the next three years. Assuming that an HS–7 Declaration form is filed for each of these vehicles, and that it will take five minutes to complete each of these forms, the agency estimates the hour burden associated with completing the paperwork for these vehicles to be approximately 781 hours per year (0.08333 hours × 9,375 = 781 hours).

b. Importation of conforming vehicles and equipment under Box 2A: Vehicles and equipment that are originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and that bear a label or tag certifying such compliance that is permanently affixed by the original manufacturer, are declared under Box 2A on the HS–7 Declaration form. In 2010, 4,596,254 vehicles were imported under Box 2A. In 2011, the figure increased to 5,048,765 vehicles, and increased again in 2012, to 5,587,621. Based on an average of these figures, the agency projects that roughly 5,077,546 vehicles will be imported each year under Box 2A for the next three years. The overwhelming majority of vehicles entered under Box 2A are imported by original manufacturers. As a rule, manufacturers do not file a separate HS–7 Declaration form for each conforming vehicle they import under Box 2A. Instead, the manufacturers furnish NHTSA with a single declaration form, on a monthly basis, to which they attach a list of all vehicles, identified by make, model, model year, and vehicle identification number (VIN), that were imported under Box 2A during that month. In this manner, it is not unusual for a single HS–7 Declaration form to be filed with the agency to cover the entry of many thousands of vehicles. Assuming that manufacturers account for 90 percent of the vehicles imported under Box 2A, and that a manufacturer will, on average, report the entry of 5,000 vehicles on a single Declaration form, and that all other vehicles imported under Box 2A are declared individually, the agency projects the hour burden associated with completing the paperwork for the entry of these vehicles to be 42,387 hours per year (5,077,546 vehicles × .9 = 4,569,791 vehicles imported by original manufacturers; 4,569,791 vehicles ÷ 5,000 vehicles per declaration forms filed = 914 declaration forms being filed per year by manufacturers; assuming that a separate declaration is filed for each other vehicle imported under Box 2A yields 507,755 declarations being filed per year for these vehicles; 507,755 + 914 = 508,669 declarations per year; 0.08333 hours to complete each declaration × 508,669 declarations = 42,387 hours).

c. Importation of conforming Canadian-market vehicles for personal use under Box 2B: A motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards can be imported by an individual for personal use under Box 2B. To accomplish the entry, the importer must furnish Customs with a letter from the vehicle's original manufacturer confirming that the vehicle conforms to all applicable U.S. Federal motor vehicle safety, bumper, and theft prevention standards, or that it conforms to all such standards except for the labeling requirements of Standard Nos. 101 *Controls and Displays* and 110 or 120 *Tire Selection and Rims,* and/or the requirements of Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* relating to daytime running lamps. NHTSA received from Customs a total of 1,474 HS–7 Declaration forms for vehicles imported under Box 2B in calendar year 2010. In addition,

declarations were filed electronically for 505 vehicles imported under Box 2B in 2007. Combining these figures yields a total of 1,979 vehicles imported under Box 2B in that calendar year. NHTSA received from Customs a total of 1,548 HS–7 Declaration forms for vehicles imported under Box 2B in 2010. In addition, electronic entries were made for 710 vehicles imported under Box 2B in that calendar year. Combining these figures yields a total of 2,258 vehicles imported under Box 2B in 2011. NHTSA received from Customs a total of 308 HS–7 Declaration forms for vehicles imported under Box 2B in 2012. In addition, electronic entries were made for 308 vehicles imported under Box 2B in that calendar year. Combining these figures yields a total of 1,275 vehicles imported under Box 2B in 2008. Assuming these figures represent a fair approximation of the volume of vehicles imported under Box 2B in those three calendar years, the agency projects that roughly 1,837 vehicles will be imported under Box 2B in each of the next three calendar years. Assuming that a separate HS–7 Declaration form is filed for each of these vehicles, the hour burden associated with the completing the paperwork for the entry of these vehicles will be 153 hours per year (1,837 vehicles × 0.08333 hours per entry = 153 hours).

d. Importation of nonconforming vehicles by registered importers under Box 3: Statutory and Regulatory Background.

Section 30112(a) of Title 49, U.S. Code prohibits, with certain exceptions, the importation into the United States of a motor vehicle manufactured after the date an applicable Federal motor vehicle safety standard (FMVSS) takes effect, unless the motor vehicle was manufactured in compliance with the standard and was so certified by its original manufacturer. Under one of the exceptions to this prohibition, found at 49 U.S.C. 30141, a nonconforming vehicle can be imported into the United States provided (1) NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS, and (2) it is imported by a registered importer (RI), or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable standards following importation. Regulations implementing this statute are found at 49 CFR parts 591 and 592.

**HS–7 Declaration Form**

The regulations require a declaration to be filed (on the HS–7 Declaration Form) at the time a vehicle is imported that identifies, among other things, whether the vehicle was originally manufactured to conform to all applicable FMVSS, and if it was not, to state the basis for the importation of the vehicle.

A nonconforming vehicle that NHTSA has decided to be eligible for importation can be imported by an RI, or by a person who has a contract with an RI to modify the vehicle so that it conforms to all applicable FMVSS, under Box 3 on the HS–7 Declaration form. As previously noted, the volume of imports under Box 3 has steadily increased in recent years. In 2010, 18,010 vehicles were imported under Box 3, in 2011, 22,733 vehicles were imported, and in 2012, 30,138 vehicles were imported. Based on these figures, the agency projects that 23,627 vehicles will be imported each year under Box 3. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be 1,969 hours (0.08333 hours to complete each HS–7 × 23,637 vehicles = 1,969 hours).

**HS–474 Conformance Bond**

NHTSA's regulations also require an RI, among other things, to furnish a bond (on the HS–474 Conformance Bond form) at the time of entry for each nonconforming vehicle it imports, to ensure that the vehicle will be brought into conformity with all applicable safety and bumper standards within 120 days of entry or will be exported from, or abandoned to, the United States. A HS–474 Conformance Bond has to be furnished for each nonconforming vehicle imported under Box 3. Assuming an importation volume of 23,627 vehicles per year, the hour burden associated with the completion of the HS–474 will be 2,363 hours (0.1 hours to complete each HS–474 × 23,627 vehicles = 2,363 hours).

**Conformity Statement**

After modifying the vehicle to conform to all applicable standards, the RI submits a statement of conformity (on a suggested form) to NHTSA, which will then issue a letter permitting the bond to be released if the agency is satisfied that the vehicle has been modified in the manner stated by the RI. The statement of conformity contains a check-off list on which the RI identifies the FMVSS and other agency requirements to which the vehicle conforms as originally manufactured and the FMVSS and other requirements to which the vehicle was modified to conform. The RI also attaches to the statement of conformity documentary and photographic evidence of the modifications that it made to the vehicle to achieve conformity with applicable standards. Collectively, these documents are referred to as a ''conformity package.''

A conformity package must be submitted for each nonconforming vehicle imported under Box 3. Because the Canadian motor vehicle safety standards are identical in most respects to the FMVSS, there are relatively few modifications that need to be performed on a Canadian-certified vehicle to conform it to the FMVSS and the conformity packages that are submitted on these vehicles are considerably less comprehensive than those submitted for vehicles from Europe, Japan, and other foreign markets. The agency estimates that it would take the average RI no more than 30 minutes to collect information for, and assemble, a conformity package for a Canadian-certified vehicle.

Generally, more modifications are needed to conform a non-Canadian vehicle to the FMVSS. To properly document these modifications, more information must be included in the conformity package for a non-Canadian vehicle than is required for a Canadian-certified vehicle. The agency estimates that it would take an RI approximately twice as long, or roughly one hour, to compile information for, and assemble, a conformity package for a typical non-Canadian vehicle.

Of the 18,010 nonconforming vehicles imported under Box 3 in 2010, 17,499, or over 97 percent, were Canadian market and 511, or under three percent, were from markets other than Canada. Of the 22,733 nonconforming vehicles imported under Box 3 in 2011, 22,380, or roughly 98.4 percent, were Canadian market and 403, or roughly 1.6 percent, were from markets other than Canada. Of the 30,138 nonconforming vehicles imported under Box 3 in 2012, 29,821 or nearly 99 percent, were Canadian market and 317, or roughly than one percent, were from markets other than Canada. Assuming this trend continues in future years, the agency estimates the hour burden associated with the submission of conformity packages on Canadian-certified vehicles to be 11,577 hours per year (23,627 vehicles × 98 percent or 0.98 = 23,154 vehicles; 23,154 vehicles × 0.5 hours per vehicle = 11,577 hours). The agency estimates the hour burden associated with the submission of conformity packages for non-Canadian vehicles to be 472 hours per year (23,627 vehicles × 2 percent or 0.02 = 472 vehicles; 472 vehicles × 1.0 hours per vehicle = 472 hours. Adding these figures yields an estimated burden of 12,049 hours per year for the entire RI industry to compile and submit

conformity packages to NHTSA on nonconforming vehicles imported under Box 3 (11,577 hours + 472 hours = 12,049 hours).

**Import Eligibility Petition**

As previously noted, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to those standards. Under 49 U.S.C. 30141, the eligibility decision can be based on the nonconforming vehicle's substantial similarity to a vehicle of the same make, model, and model year that was manufactured for importation into, and sale in the United States, and certified as complying with all applicable FMVSS by its original manufacturer. Where there is no substantially similar U.S.-certified vehicle, the eligibility decision must be predicated on the vehicle having safety features that are capable of being modified to conform to the FMVSS, based on destructive crash test data or such other evidence that the agency may deem adequate. The agency makes import eligibility decisions either on its own initiative, or in response to petitions filed by RIs. Only a small number of RIs (currently about 15 out of the 64 RIs registered with the agency) ever submit import eligibility petitions. Many of these businesses have, over, the years, submitted multiple petitions to the agency. The agency estimates that it would take the typical RI that petitions the agency roughly two hours to complete the paperwork associated with the submission of a petition for a vehicle that has a substantially similar U.S.-certified counterpart, and roughly twice as long, or four hours, to complete the paperwork associated with the submission of a petition for a vehicle that lacks a substantially similar U.S.-certified counterpart. In 2010, 11 import eligibility petitions were submitted to the agency. Of these, 7, or 64 percent, were for vehicles with substantially similar U.S.-certified counterparts and 4, or 36 percent, were for vehicles for which there were no substantially similar U.S. certified counterparts. In 2011, 10 import eligibility petitions were submitted to the agency. Of these, 8, or 80 percent, were for vehicles with substantially similar U.S.-certified counterparts, and 2, or 20 percent, were for vehicles for which there were no substantially similar U.S.-certified counterparts. In 2012, 17 import eligibility petitions were submitted to the agency. Of these, 14, or 82 percent, were for vehicles with substantially similar U.S.-certified counterparts, and 3, or 18 percent, were for vehicles for which there were no substantially similar U.S.-certified counterparts. Assuming this trend continues in future years, the agency estimates that roughly 13 import eligibility petitions will be submitted each year, 75 percent of which, or 10 petitions, will be for vehicles with substantially similar U.S.-certified counterparts, and 20 percent of which, or 3 petitions, will be for vehicles lacking substantially similar U.S.-certified counterparts. Based on these figures, the agency estimates that the hour burden for the paperwork associated with the submission of import eligibility petitions to be 32 hours per year (10 petitions × 2 hours per petition = 20 hours; 3 petitions × 4 hours per petition = 12 hours; 20 hours + 12 hours = 32 hours).

e. Importation of vehicles or equipment intended solely for export under Box 4: A nonconforming vehicle or equipment item that is intended solely for export, and bears a tag or label to that effect, can be entered under Box 4 on the HS–7 Declaration form. The majority of vehicles imported for export only under Box 4 are imported by original manufacturers that do not file individual declaration forms with the agency for each vehicle imported, but instead include those vehicles in the monthly count supplied to the agency along with conforming vehicles imported under Box 2A. The agency received only 2 HS–7 Declaration forms for vehicles imported under Box 4 in 2011, and none in either 2010 or 2012. Assuming this represents the share of vehicles imported under Box 4 by parties other than original manufacturers, the agency projects that HS–7 Declaration forms will be filed for no more than one tenth of one percent of the vehicles imported under Box 4 in future years. Averaging the volume of vehicles imported for export only under Box 4 over the past three years yields an estimate of 46,515 vehicles being imported on an annual basis in the next three years, and 47 HS–7 Declaration forms being filed in each of those years. Based on that figure, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 4 hours (0.08333 hours to complete each HS–7 × 47 vehicles = 3.91 hours).

f. Temporary importation of nonconforming vehicles by nonresidents of the United States under Box 5: Under an international convention to which the United States is a signatory, a nonresident of the United States can import a nonconforming vehicle for personal use, for a period of up to one year, provided the vehicle is not sold while in the United States and is exported no later than one year from its date of entry. These vehicles are entered under Box 5 on the HS–7 Declaration form. To enter a vehicle under Box 5, the importer must also furnish Customs with the importer's passport number and the name of the country that issued the passport. In 2010, a total of 375 vehicles were imported under Box 5. In 2011, 352 vehicles were imported under that box. In 2012, 381 were imported. Based on these figures, the agency estimates that roughly 369 vehicles will be imported under Box 5 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 31 hours (0.08333 hours to complete each HS–7 × 369 vehicles = 30.74 hours).

g. Temporary importation of nonconforming vehicles by foreign diplomat under Box 6: A member of a foreign government on assignment in the United States, or a member of the secretariat of a public international organization so designated under the International Organizations Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State, can temporarily import a nonconforming vehicle for personal use while in the United States. These vehicles are entered under Box 6 on the HS–7 Declaration form. The importer must attach to the declaration a copy of the importer's official orders and supply Customs with the name of the embassy to which the importer is attached. In 2010, a total of 43 vehicles were imported under Box 6. In 2011, 23 vehicles were imported under that box. In 2012, 21 were imported. Based on these figures, the agency estimates that roughly 29 vehicles will be imported under Box 6 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be roughly 2 hours (0.08333 hours to complete each HS–7 × 29 vehicles = 2.41 hours).

h. Temporary importation of nonconforming vehicles and equipment under Box 7: Under 49 U.S.C. 30114, NHTSA is authorized to exempt a motor vehicle or item of motor vehicle equipment from the importation restriction in 49 U.S.C. 30112(a), on such terms the agency decides are necessary, for purposes of research, investigations, demonstrations, training, competitive racing events, show, or display. Regulations implementing this

provision are found at 49 CFR part 591. Under those regulations, written permission from NHTSA is needed to temporarily import a nonconforming motor vehicle or equipment item for one of the specified purposes unless the importer is a manufacturer of motor vehicles that are certified to the FMVSS. An application form that can be used to obtain the letter of permission is posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* If NHTSA grants it permission, the nonconforming motor vehicle or equipment item can be temporarily imported under Box 7 on the HS–7 Declaration form. In 2010, 5,962 vehicles were imported under Box 7. In 2011, 6,182 vehicles were imported under that box. In 2012, 6,089 were imported. Permission letters were requested from NHTSA for 255 of the vehicles imported in 2010, 287 of the vehicles imported in 2011, and 262 of the vehicles imported in 2012, representing roughly 4.5 percent of the total number of vehicles imported under Box 7 in those years. The remaining vehicles were imported by original manufacturers of vehicles that are certified to the FMVSS, who can temporarily import nonconforming vehicles for any of the specified purposes under Box 7 without the need for a NHTSA permission letter. Averaging the volume of imports over the past three years, the agency projects that roughly 6,078 vehicles will be imported under Box 7 in each of the next three years. Assuming that applications for NHTSA permission letters will be submitted for 4.5 percent of those vehicles, and that a single application will be filed for each vehicle, the agency estimates that 273 applications will be filed in each of the next three years. Based on the estimate that it will take roughly five minutes to complete each of those applications, the agency projects that under 23 hours will be expended on an annual basis to submit applications for permission from NHTSA to import vehicles under Box 7 (0.0833 hours per application × 273 applications = 22.74 hours). Assuming that a single HS–7 Declaration form is filed for each vehicle imported under Box 7, the agency projects that under 507 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 7 (0.0833 hours per declaration × 6,078 vehicles = 506.47 hours).

i. Importation of off-road vehicles under Box 8: NHTSA regulates the importation of ''motor vehicles,'' which are defined (at 49 U.S.C. 30102) as vehicles that are driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways. Vehicles that are not primarily manufactured for on-road use do not qualify as ''motor vehicles'' under this definition, and may therefore be imported without regard to their compliance with the FMVSS. These vehicles are entered under Box 8 on the HS–7 Declaration form. Vehicles that can be entered in this fashion include those that are originally manufactured for closed circuit racing. Although approval from NHTSA is not needed to import a vehicle that was originally manufactured for racing purposes, the agency will issue a letter recognizing a particular vehicle as having been so manufactured if the importer requests the agency to do so. An application form that can be used to obtain such a letter is also posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* In 2010, applications were submitted to NHTSA for 34 vehicles imported under Box 8. In 2011, 40 applications were filed. In 2012, 15 were filed. Based on these figures, the agency projects that 30 applications to import vehicles for racing purposes under Box 8 will be submitted in each of the next three years. Assuming that it will take five minutes to complete each of these applications, the agency estimates that under 3 hours will be expended in completing these applications (0.08333 hours × 30 applications = 2.49 hours).

In 2010, a total of 152,665 vehicles were imported under Box 8. In 2011, 192,283 vehicles were imported under that box. In 2012, 326,049 were imported. Averaging those figures, the agency projects that roughly 223,666 vehicles will be imported under Box 8 in each of the next three years. The vast majority of these vehicles were off-road motorbikes or all-terrain vehicles that were imported in bulk shipments for which a single declaration was filed. NHTSA received only 75 HS–7 Declaration forms for vehicles imported under Box 8 in 2010, 5 for vehicles imported in 2011, and none for those imported in 2012. The remainder of the entries were made electronically. Based on the assumption that each entry covers 100 vehicles, the agency estimates that approximately 224 Box 8 entries will be made on an annual basis over the next three years. Relying on this assumption, the agency projects that slightly less than 19 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 8 (0.0833 hours per declaration × 224 vehicle entries = 18.66 hours).

j. Importation of vehicles or equipment requiring further manufacturing operations under Box 9: A motor vehicle or equipment item that requires further manufacturing operations to perform its intended function, other than the addition of readily attachable components such as mirrors or wipers, or minor finishing operations such as painting, can be entered under Box 9 on the HS–7 Declaration form. Documents from the manufacturer must be furnished for these entries. In 2010, 10,323 vehicles were imported under Box 9. In 2011, 14,856 vehicles were imported under that box. In 2012, 12,411 were imported. Averaging those figures, the agency projects that roughly 12,530 vehicles will be imported under Box 9 in each of the next three years. Assuming that a separate HS–7 Declaration form is filed for each of those vehicles, the agency projects that approximately 1,000 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 9 (0.0833 hours per declaration × 8,600 vehicles = 1,044.12).

k. Importation of vehicles for show or display under Box 10: Vehicles that are deemed by NHTSA to have sufficient technological or historical significance that they would be worthy of being exhibited in car shows if they were brought to the United States are eligible for importation for purposes of show or display under Box 10 on the HS–7 Declaration form. Written permission from NHTSA is also needed to import a vehicle for that purpose. An application form that can be used to request the agency to decide that a particular make, model, and model year vehicle is eligible for importation for purposes of show or display is posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* In 2010, the agency received 12 applications to determine vehicles eligible for importation for purposes of show or display. In 2011, the agency received 3 such applications. In 2012, the agency received 7. Averaging these figures, the agency projects that it will receive 7 applications to determine vehicles eligible for importation for purposes of show or display in each of the next three years. Assuming that it will take the typical applicant up to ten hours to compile and assemble the materials needed to support each application, the agency estimates that up to 70 hours will be expended in this activity in each of those years.

Also on the agency's Web site is an application form that can be used to request NHTSA to permit a particular vehicle to be imported for purposes of show or display once the agency has decided that the vehicle is of a make, model, and model year that is eligible

for importation for those purposes. Certain restrictions apply to vehicles that are imported for purposes of show or display. Among those is a requirement that the vehicle not be driven in excess of 2,500 miles per year. The application specifies the terms of the importation and makes provision for the applicant to agree to those terms. In 2010, the agency received 29 applications to import specific vehicles for purposes of show or display. In 2011, the agency received 14 such applications. In 2012, the agency received 34. Averaging those figures, the agency estimates that it will receive roughly 26 applications in each of the next three years. Assuming that it will take the typical applicant up to one hour to compile and assemble the materials needed to support each application, the agency estimates that up to 26 hours will be expended in this activity in each of those years.

l. Importation of equipment subject to the Theft Prevention Standard under Box 11: Items of motor vehicle equipment that are marked in accordance with the Theft Prevention Standard in 49 CFR part 541 are entered under Box 11 on the HS–7 Declaration form. In 2010, there were 3,768 entries under Box 11. In 2011, there were 3,126 such entries. In 2012 there were 2,457. Averaging these figures, the agency estimates that 3,117 entries will be made under Box 11 in each of the next three years. Virtually all of these entries are made electronically. This is evidenced by the fact that the agency received no HS–7 Declaration forms for Box 11 entries made in the years from 2010 through 2012. Assuming that it will take five minutes to complete each of these entries, the agency projects that under 260 hours will be expended on an annual basis in making these entries for equipment imported under Box 11 (0.0833 hours per declaration × 3,117 declarations = 259.74 hours).

m. Temporary importation of nonconforming vehicles by foreign military personnel under Box 12: A member of the armed forces of a foreign country on assignment in the United States can temporarily import a nonconforming vehicle for personal use during the member's tour of duty under Box 12 on the HS–7 Declaration form. In 2010, a total of 116 vehicles were imported under Box 12. In 2011, 121 such vehicles were imported. In 2012, 49 were imported. Averaging these figures, the agency projects that roughly 95 vehicles will be imported under Box 12 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 8 hours (0.08333 hours to complete each HS–7 × 95 vehicles = 7.91 hours).

n. Importation of vehicles to prepare import eligibility petitions under Box 13: A nonconforming vehicle imported by an RI for the purpose of preparing a petition for NHTSA to decide that a particular make, model, and model year vehicle is eligible for importation is entered under Box 13 on the HS–7 Declaration form. A letter from NHTSA granting the importer permission to import the vehicle for that purpose must be filed with the declaration. NHTSA has issued guidance to inform RIs that it will permit no more than two vehicles to be imported for the purpose of preparing an import eligibility petition. Box 13 was incorporated into the HS–7 Declaration form when that form was last revised in May, 2006. The agency received requests to permit the importation of 18 vehicles under Box 13 in 2010, 12 in 2011, and 21 in 2012. As previously noted, the agency projects that roughly 13 import eligibility petitions will be submitted in each of the next three years. The agency permits an RI to import up to two vehicles for the purpose of preparing an import eligibility petition. Assuming that each petitioning RI imports two vehicles, the agency estimates that it will receive up to 26 requests per year for letters permitting those vehicles to be imported under Box 13. Estimating that it will take five minutes to complete each of those requests, the hour burden associated with this activity will be roughly 1 hour (0.08333 hours to complete each request × 26 vehicles = 1.083299 hours).

2. Information collected from applicants for RI status and existing RIs seeking to renew their registrations: Under 49 U.S.C. 30141, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless (1) NHTSA decides it is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS and (2) it is imported by an RI or by a person who has a contract with an RI to modify the vehicle so that it complies with all applicable FMVSS following importation. NHTSA is authorized by 49 U.S.C. 30141(c) to establish, by regulation, procedures for registering RIs. Those regulations are found in 49 CFR part 592.

a. Information collected from applicants: Under the terms of the regulations in part 592, an applicant for RI status must submit to the agency information that identifies the applicant, specifies the manner in which the applicant's business is organized (i.e., sole proprietorship, partnership, or corporation), and, depending on the form of organization, identifies the principals of the business. The application must also state that the applicant has never had a registration revoked and identify any principal previously affiliated with another RI. The application must also provide the street address and telephone number in the United States of each facility for the conformance, storage, and repair of vehicles that the applicant will use to fulfill its duties as an RI, including records maintenance, and the street address in the United States that it designates as its mailing address. The applicant must also furnish a business license or other similar document issued by a State or local authority authorizing it to do business as an importer, seller, or modifier of motor vehicles, or a statement that it has made a bona fide inquiry and is not required by any State or local authority to maintain such a license. The application must also set forth sufficient information to allow the Administrator to conclude that the applicant (1) is technically able to modify nonconforming vehicles to conform to applicable Federal motor vehicle safety and bumper standards, (2) owns or leases one or more facilities sufficient in nature and size to repair, conform, and store the vehicles for which it furnishes statements of conformity to NHTSA, (3) is financially and technically able to provide notification of and a remedy for a noncompliance with an FMVSS or a defect related to motor vehicle safety determined to exist in the vehicles it imports, and (4) is able to acquire and maintain information on the vehicles that it imports and the owners of those vehicles so that it can notify the owners if a safety-related defect or noncompliance is determined to exist in such vehicles. The application must also contain a statement that the applicant will abide by the duties of an RI and attest to the truthfulness and correctness of the information provided in the application. A brochure containing sample documents that an applicant may use in applying to become an RI is posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* In 2010, NHTSA received 1 application for RI status. In 2011, the agency received 4 applications of this kind. In 2012, the agency received 2. Based on these figures, the agency anticipates that it will receive 2 applications for RI status in each of the next three years. Assuming that it will

take up to ten hours to compile and assemble the material needed to support a single application, the agency estimates that 20 hours will be expended in this activity for each of the next three years (2 applications × 10 hours = 20 hours).

b. Information collected from existing RIs: To maintain its registration, an RI must file an annual statement affirming that all information it has on file with the agency remains correct and that it continues to comply with the requirements for being an RI. Formats that existing RIs may use to renew their registrations are included in a newsletter sent electronically to each RI before the renewal is due and posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* The number of RI renewals declined in recent years on account of the weakening of the U.S. dollar against the Canadian dollar, and the concomitant reduction in the volume of vehicles imported from Canada. In 2010, NHTSA received renewal packages from 66 RIs. In 2011, the agency received 65 renewal packages. In 2012, the agency received 65. Based on these figures, the agency anticipates that it will receive an average of 65 renewal packages in each of the next three years. Assuming that it will take up to two hours to compile and assemble the material needed to support a single application for renewal, the agency estimates that 130 hours will be expended in this activity for each of the next three years (65 renewal applications × 2 hours = 130 hours).

3. Information to be retained by RIs: The agency's regulations at 49 CFR 592.6(b) require an RI to maintain and retain certain specified records for each motor vehicle for which it furnishes a certificate of conformity to NHTSA, for a period of 10 years from the vehicle's date of entry. As described in the regulations, those records must consist of ''correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.'' The regulations further specify that the records to be retained must include (1) a copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation. See 49 CFR 592.6(b)(1) through (b)(4).

The latter records are referred to as a ''conformity package.'' Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle.

Approximately 120 conformity packages can be stored in a cubic foot of space. Based on projected imports of 23,627 nonconforming vehicles per year, 196.79 cubic feet of space will be needed on an industry-wide basis to store one year's worth of conformity packages. Assuming an annual cost of $20 per cubic foot to store the information, NHTSA estimates the aggregate cost to industry for storing a year's worth of conformity packages to be $3,936 per year. Over a ten-year retention period, a member of the industry would be required to retain 55 annual units of records (assuming that one annual unit was stored in the first year, two annual units in the second year, and so on). The aggregate cost to industry of the ten-year record retention requirement will therefore be $216,480 (55 × $3,936 = $216,480).

RIs are also required under 49 CFR 592.6(b) to retain a copy of the HS–7 Declaration Form furnished to Customs at the time of entry for each nonconforming vehicle for which they submit a conformity package to NHTSA. Paper HS–7 Declaration Forms are only filed for a small fraction of the nonconforming vehicles imported into the United States. Customs brokers file entries for most nonconforming vehicles electronically by using the Automated Broker Interface (ABI) system. For example, in Calendar year 2010, 17,645 ABI entries were made for nonconforming vehicles imported into the United States under Box 3, and only 365 paper HS–7 Declaration Forms (representing just two percent of the total) were filed for such vehicles. Because HS–7 Declaration Forms are filed for only a small fraction of the nonconforming vehicles that are imported by RIs, the storage requirement for those records can have no more than a negligible cost impact on the industry. Because the remaining records that RIs are required to retain under 49 CFR 592.6(b) may be stored electronically, the costs incident to the storage of those records should also be negligible.

RIs who conduct recall campaigns to remedy a safety-related defect or a noncompliance with an FMVSS determined to exist in a vehicle they import must report the progress of those campaigns to NHTSA. The agency estimates that it should take each RI that is required to conduct a safety recall campaign approximately one hour to compile information for, and prepare each of the two reports it would be required to submit to the agency detailing the progress of the recall campaign. Since vehicle manufacturers in most cases include vehicles imported by RIs in their own recall campaigns, it is likely that very few of these reports would have to be prepared or submitted by RIs.

*Description of the Need for the Information and Proposed Use of the Information*—The information collection detailed above is necessary to ensure that motor vehicles and items of motor vehicle equipment subject to the Federal motor vehicle safety, bumper and theft prevention standards are lawfully imported into the United States. To be lawfully imported, the vehicle or equipment item must be covered by one of the boxes on the HS–7 Declaration form and the importer must declare, subject to penalty for making false statements, that the vehicle or equipment item is entitled to entry under the conditions specified on the form, including the provision of any supporting information or materials that may be required.

NHTSA relies on the information provided by RIs and applicants for RI status to obtain and renew their registrations so that it can better ensure that RIs are meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles and can make more informed decisions in conferring RI status on applicants and in permitting RI status to be retained by those currently holding registrations. In this manner, those lacking the capability

to responsibly provide RI services, or who have committed or are associated with those who have committed past violations of the vehicle importation laws, can be more readily denied registration as an RI, or if they already hold such a registration, have that registration suspended or revoked when circumstances warrant such action.

*Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)*—With regard to the HS–7 Declaration form, likely respondents include any private individual or commercial entity importing into the United States a vehicle or item of motor vehicle equipment subject to the Federal motor vehicle safety standards. It is difficult to estimate, with reliability, the absolute number of such respondents; however, that number would include:

- The 64 RIs who are currently registered with NHTSA and import nonconforming vehicles under Boxes 3 and 13;
- The roughly 1,837 individuals who import each year Canadian-certified vehicles for personal use under Box 2B;
- The several hundred original manufacturers who import conforming motor vehicles and equipment items under Box 2A; nonconforming vehicles or equipment intended for export under Box 4; nonconforming vehicles and equipment on a temporary basis for purposes of research, investigations, or other reasons specified under Box 7; vehicles and equipment requiring further manufacturing operations under Box 9; and equipment subject to the Theft Prevention Standard under Box 11.
- The several hundred dealers, distributors, and individuals who import off-road vehicles such as dirt bikes and all-terrain vehicles or ATVs, as well as other vehicles that are not primarily manufactured for on-road use under Box 8.
- The several hundred nonresidents of the United States and foreign diplomatic and military personnel who temporarily import nonconforming vehicles for personal use under Boxes 5, 6, and 12.

*Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information*—Adding together the burden hours detailed above yields a total of 61,882 hours expended on an annual basis for all paperwork associated with the filing of the HS–7 Declaration form and other aspects of the vehicle importation program.

*Estimate of the Total Annual Costs of the Collection of Information*—Other than the cost of the burden hours, the only additional costs associated with this information collection are those incident to the storage, for a period of ten years, of records pertaining to the nonconforming vehicles that each RI imports into the United States.

**Authority:** 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50 and 501.8(f).

Issued on: August 6, 2013.

**Jeffrey Giuseppe,**

*Chief, Equipment Division, Office of Vehicle Safety Compliance.*

[FR Doc. 2013–19492 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2013–0091]**

### National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Meeting Notice—National Emergency Medical Services Advisory Council.

**SUMMARY:** The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC, area. This notice announces the date, time, and location of the meeting, which will be open to the public, as well as opportunities for public input to the NEMSAC. The purpose of NEMSAC, a nationally recognized council of emergency medical services representatives and consumers, is to advise and consult with DOT and the Federal Interagency Committee on EMS (FICEMS) on matters relating to emergency medical services (EMS).

**DATES:** The meeting will be held on September 5, 2013, from 8 a.m. to 5:30 p.m. EDT, and on September 6, 2013, from 8 a.m. to 12 p.m. EDT. A public comment period will take place on September 5, 2013, between 3 p.m. and 3:30 p.m. EDT and September 6, 2013, between 10 a.m. and 10:15 a.m. EDT. Written comments from the public must be received no later than September 3, 2013.

**ADDRESSES:** The meeting will be held at the Performance Institute on the third floor of 901 New York Avenue NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Drew Dawson, Director, U.S. Department of Transportation, Office of Emergency Medical Services, 1200 New Jersey Avenue SE., NTI–140, Washington, DC 20590, telephone 202–366–9966; email *Drew.Dawson@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.). The NEMSAC is authorized under Section 31108 of the Moving Ahead with Progress in the 21st Century Act of 2012. The NEMSAC will meet on Thursday and Friday, September 5–6, 2013, at the Performance Institute on the third floor of 901 New York Avenue NW., Washington, DC 20001.

**Tentative Agenda of National EMS Advisory Council Meeting, September 5–6, 2013**

The tentative agenda includes the following:

*Thursday, September 5, 2013 (8 a.m. to 5:30 p.m. EDT)*

(1) Opening Remarks
(2) Disclosure of Conflicts of Interests by Members
(3) Reports from the Departments of Transportation, Homeland Security, and Health & Human Services
(4) Presentation and discussion on draft EMS Workforce Guidelines and EMS responses to active shooter and improvised explosive device events
(5) Presentation and discussion on NHTSA's Emerging Issues White Papers
  a. Pre-Hospital EMS as a Public Good and Essential Service
  b. Research in Prehospital Care: Models for Success
  c. Emerging Digital Technologies for EMS and 911 Systems
  d. Efficacy of Prehospital Application of Tourniquets and Hemostatic Dressings to Control Traumatic External Hemorrhage
(6) Presentation, Discussion and Possible Adoption of Reports and Recommendations from the following NEMSAC Workgroups:
  a. Patient Protection and Affordable Care Act
  b. Revision of the EMS Education Agenda for the Future
  c. EMS Agenda for the Future
  d. Improving Internal NEMSAC Processes
  e. Safety
(7) Other Business of the Council
(8) Public Comment Period (3 p.m. to 3:30 p.m. EDT)
(9) Workgroup Breakout Sessions (3:30 p.m.–5:30 p.m. EDT)

*Friday, September 6, 2013 (8 a.m. to 12 p.m. EDT)*

(1) Unfinished Business/Continued Discussion from Previous Day

(2) Public Comment Period (10 a.m. to 10:15 a.m. EDT)
(3) Next Steps and Adjourn

On Thursday, September 5, 2013, from 3:30 p.m. to 5:30 p.m. EDT, the NEMSAC workgroups will meet in breakout sessions at the same location. These sessions are open for public attendance, but their agendas do not accommodate public comment.

*Registration Information:* This meeting will be open to the public; however, pre-registration is requested. Individuals wishing to attend must register online at *http://events.signup4.com/NEMSACSeptember2013* no later than September 3, 2013. There will not be a teleconference option for this meeting.

*Public Comment:* Members of the public are encouraged to comment directly to the NEMSAC. Those who wish to make comments on Thursday, September 5 2013, between 3 p.m. and 3:30 p.m. EDT or Friday, September 6, 2013, between 10 a.m. and 10:15 a.m. EDT are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. Written comments from members of the public will be distributed to NEMSAC members at the meeting and should reach the NHTSA Office of EMS no later than September 3, 2013. Written comments may be submitted by either one of the following methods: (1) you may submit comments by email: *nemsac@dot.gov* or (2) you may submit comments by fax: (202) 366–7149.

A final agenda as well as meeting materials will be available to the public online through *www.EMS.gov* on or before August 30, 2013.

Issued on: August 8, 2013.

**Michael L. Brown,**

*Acting Associate Administrator for Research and Program Development.*

[FR Doc. 2013–19615 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0003; Notice 2]**

### Spartan Motor Chassis, Inc.; Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of Denial.

**SUMMARY:** Spartan Motor Chassis, Inc. (Spartan) has determined that model year 2011 and 2012 model MM, K2, K3, and SU incomplete vehicles manufactured between January 28, 2011 and June 28, 2011, do not fully comply with paragraph S5.1.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems.* Spartan has filed an appropriate report pursuant to 49 CFR Part 573, Defect and Noncompliance Responsibility and Reports (dated July 13, 2011).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, *Exemption for Inconsequential Defect or Noncompliance,* Spartan has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on February 7, 2012 in the **Federal Register** (77 FR 6190). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0003.''

*Contact Information:* For further information on this decision contact Mr. James A. Jones, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5294, facsimile (202) 366–7002.

*Summary of Spartans' Analyses:* Spartan explains that the noncompliance is the accuracy of the air gauges used in the air brake systems on the subject vehicles do not meet the accuracy requirements identified in FMVSS No. 121 S5.1.4. Spartan explains that the air brake systems operate as designed and meet all other applicable requirements of FMVSS No. 121. In this case, the operator may not be able to detect, by way of the air gauges, the variation between the physical cut-out pressure of the air compressor versus what is shown on the gauge. Although the air pressure within the air systems is controlled by an air governor that is independent of the gauges, rendering the gauges do not provide an accurate indication of the air pressure to the driver.

Spartan additionally states that it has corrected the gauge calibration so that future production will be in compliance.

In summation, Spartan believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA Decision**

*Requirement Background*

Paragraphs S5 of FMVSS No. 121 requires in pertinent part:

S5.1 *Required equipment for trucks and buses.* Each truck and bus shall have the following equipment: * * *

S5.1.4 *Pressure gauge.* A pressure gauge in each service brake system, readily visible to a person seated in the normal driving position, that indicates the service reservoir system air pressure. The accuracy of the gauge shall be within plus or minus 7 percent of the compressor cut-out pressure.

The air pressure gauge requirement was adopted during the initial proposal of Standard No. 121 and has been a longstanding requirement of the agency's safety standard that regulates the manufacture of buses and trucks equipped with air brakes. The agency initially proposed that air pressure gauges be visible to the driver seated at the driver's position and have an accuracy of ''plus or minus 5 percent'' of the air compressor cut-out pressure (see 35 FR 10368). In response to comments, the agency decided to broaden the accuracy of the gauges to ''plus or minus 7 percent'' of the air compressor cut-out pressure (see 36 FR 3817).

The requirement focuses on two important aspects of motor vehicle safety: 1. Air gauges must be readily visible to the driver seated behind the steering wheel and, 2. Air gauges must accurately display system air pressure to the driver during operation of the vehicle. Readily visible and accurate gauges provide critical feedback to drivers about the condition of the vehicle's air brake system. According to Spartan, with the vehicle's air system fully charged to physical cut-out pressure, the faulty gauges could read as high as 133 psi when they should read 120 psi.

*Discussion:* The manufacturer of the faulty analog air pressure gauges, Ametek, miscalculated the sweep angle of the pointer-dial resulting in pressure readings that could overshoot by as much as 11 percent of the air compressor cut-out pressure. With the vehicle's air system fully charged to the physical cut-out pressure, the faulty gauges could read as high as 133 psi when they should read 120 psi.

There are three psi readings indicated on the faulty air pressure gauge read-out displays, at 0, 85 and 150 psi, with no

other graduation marks or incremental pressures between these pressures. Since, the gauges lack markings, Spartan argued that vehicle operators may not be able to detect the variance in pressure readings. Spartan, however, did not provide any supporting documentation to show the difference in angle between a properly calibrated gauge and a faulty gauge or any data to demonstrate whether operators, seated at the driver's position, detect the difference in angle.

Spartan also argued that air pressure within the air system is controlled by an air governor that is independent of the gauges rendering the gauges as only an indicator to the operator. The fact that the vehicles may have an air governor that controls air pressure cut-out does not eliminate the need for an accurate gauge for the driver.

The 11 percent error as stated by Spartan is unacceptable for air pressure gauges used in heavy duty air-braked vehicle applications. Because of the large error and overshoot of the faulty gauges, actual low system pressures may appear to the driver to be safe, leaving operators ignorant of the true condition of the vehicle's air brake system. Since the faulty Ametek gauges do not have sufficient markings that specify the normal operating range, it is even more important that the gauges be accurate so that the driver is aware of the service reservoir system air pressures [1].

Drivers rely upon the gauges to provide accurate information, especially in situations that may involve loss of system air, and that detect malfunctioning air system components when service reservoir system air does not appear to fully charge to compressor cut-out. These conditions can create an operational hazard when there is insufficient air pressure for proper functioning of the air brake system. So, it is important that the gauges accurately display pressures, not only at compressor cut-out, but throughout scale. Gauges must accurately display system air pressure to the driver during operation of the vehicle as intended.

*Decision:* In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Spartan's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8.

Issued on: August 5, 2013.

**Nancy Lummen Lewis,**

*Associate Administrator for Enforcement.*

[FR Doc. 2013–19489 Filed 8–12–13; 8:45 am]

**BILLING CODE 4910–59–P**

[1] On March 29, 2013, in a supplemental submission upon NHTSA's request (and incorporated into the official file), Spartan provided a copy of the section of the owner's manual which discusses the operation of the vehicle's pressure gauges. The manual states that the vehicle's normal operating pressure is ''*100 to 140 psi,* which is preset at the factory . . . Before moving the vehicle, *be sure both gauges are within normal operating range [emphasis added].*'' The pictorial, however, shows different gauges than the subject faulty Ametek pressure gauges. The pressure gauges in the pictorial have incremental markings at 0, 50, 65, 100 and 150 psi so that drivers can readily check whether system air pressure is in the normal operating range. For the faulty gauges, with only 3 incremental markings at 0, 85 and 150 psi, the normal operating range is not specified and drivers may not be able to readily determine whether system air is at normal operating pressures.

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of 5 individual(s) and 2 entity(-ies) Pursuant to Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations''

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 5 individual(s) and 2 entity(-ies) whose property and interests in property are blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations.''

**DATES:** The designations by the Director of OFAC, pursuant to Executive Order 13581, of the 5 individual(s) and 2 entity(-ies) identified in this notice were effective on July 24, 2013.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

#### Background

On July 24, 2011, the President issued Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations'' (the ''Order''), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). The Order was effective at 12:01 a.m. eastern daylight time on July 25, 2011. In the Order, the President declared a national emergency to deal with the threat that significant transnational criminal organizations pose to the national security, foreign policy, and economy of the United States.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to satisfy certain criteria set forth in the Order.

On July 24, 2013, the Director of OFAC, in consultation with the Attorney General and the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, 5 individual(s) and 2 entity(-ies) whose property and interests in property are blocked pursuant to the Order.

The listings for these individuals on OFAC's List of Specially Designated Nationals and Blocked Persons appear as follows:

#### Individual(s)

1. DI LAURO, Marco; DOB 16 Jun 1980; POB Naples, Italy (individual) [TCO].
2. RICCIO, Mario (a.k.a. RICCIO, Mariano); DOB 28 Jun 1991; POB Mugnano di Napoli, Italy (individual) [TCO].
3. MENNETTA, Antonio; DOB 03 Jan 1985; POB Naples, Italy (individual) [TCO].
4. ABETE, Mariano; DOB 03 Apr 1991; POB Naples, Italy (individual) [TCO].
5. GUARINO, Rosario; DOB 26 Jun 1983; POB Naples, Italy (individual) [TCO].

#### Entities

1. AVUAR OOO (a.k.a. AVUAR LLC), 12/120, Komn 51, Ulitsa Demokraticheskaya, Samara 443031, Russia; National ID No. 1036300456213 (Russia); alt.

National ID No. 14565711 (Russia); alt. National ID No. 6315565439 (Russia) [TCO].

2. GUGA ARM SRO (a.k.a. GUGA ARM LTD), Dr. Davida Bechera 907/27, Karlovy Vary 36001, Czech Republic; National ID No. 27994783 (Czech Republic) [TCO].

Dated: July 24, 2013.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2013–19563 Filed 8–12–13; 8:45 am]

**BILLING CODE 4811–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0750]**

### Agency Information Collection (Ethics Consultation Feedback Tool (ECFT)) Activity Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 12, 2013.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0750'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0750''.

**SUPPLEMENTARY INFORMATION:**

*Title:* Ethics Consultation Feedback Tool (ECFT), VA Form 10–10065.

*OMB Control Number:* 2900–0750.

*Type of Review:* Revision of an approved collection.

*Abstract:* VA Form number 10–0502 has been replaced with VA Form number 10–0065. None of the information requested has changed. VA Form 10–10065 will be used to collect data from patients and family members about their experience during the Ethics Consultation Service. VA will be used the data to improve the process of ethics consultation (i.e., how ethics consultation is being performed) as well as its outcomes (i.e., how ethics consultation affects participants and the facility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 25, 2013, on page 24469.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 17.

*Estimated Average Burden Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 204.

Dated: August 8, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–19537 Filed 8–12–13; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 78 Tuesday,
No. 156 August 13, 2013

Part II

## Department of Education

34 CFR Parts 75 and 77
Direct Grant Programs and Definitions That Apply to Department Regulations; Final Rule

## DEPARTMENT OF EDUCATION

**34 CFR Parts 75 and 77**

**[Docket ID ED–2012–OII–0026]**

**RIN 1890–AA14**

## Direct Grant Programs and Definitions That Apply to Department Regulations

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations in the Education Department General Administrative Regulations (EDGAR) to: improve the Department's ability to evaluate the performance of discretionary grant programs and grantee projects; support, where appropriate, projects supported by evidence of effectiveness; review grant applications using selection factors that promote the Secretary's policy objectives related to project evaluation, sustainability, productivity, and strategy to scale; and reduce burden on grantees in selecting implementation sites, implementation partners, or evaluation service providers for their proposed projects. These amendments will allow the Department to be more effective and efficient when selecting grantees in discretionary grant competitions, provide higher-quality data to the Congress and the public, and better focus applicants on the goals and objectives of the programs to which they apply for grants.

**DATES:** These regulations are effective September 12, 2013.

**FOR FURTHER INFORMATION CONTACT:** Erin McHugh, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W319, LBJ, Washington, DC 20202. Telephone: (202) 401–1304 or by email: *erin.mchugh@ed.gov*.

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

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

Purpose of This Regulatory Action: The purpose of this action is to amend EDGAR to improve the quality and effectiveness of grant-making decisions and reduce the burden on applicants and grantees. These amendments will help align the Department's grant process with the Secretary's policy objectives and allow Department programs to design grant competitions to achieve those objectives. These amendments will also increase the flexibility for applicants and grantees to both reduce burden on applicants and grantees and improve the quality of data generated and reported by grantees. The authority to amend EDGAR is 20 U.S.C. 1221e–3 and 3474.

Summary of the Major Provisions of This Regulatory Action: These rules:

1. Allow the Secretary, in the application notice for a grant competition, to establish performance measurement requirements for grantees (New § 75.110);

2. Revise requirements for project evaluations submitted to the Department by grantees and for continuation of a multi-year project to incorporate performance measurement requirements for grantees (Amended §§ 75.253 and 75.590);

3. Authorize grantees to procure implementation sites without regard to the procurement procedures in parts 74 and 80 and use small purchase procedures to procure evaluation service providers and providers of services that are essential to the success of a proposed grant, provided the site or service provider is identified in the grant application (New § 75.135);

4. Allow the Secretary, through an announcement in the **Federal Register,** to authorize grantees under particular programs to award subgrants to directly carry out programmatic activities. The possible subgrantees and the program activities they would carry out must be identified and described in the grantees' applications or selected through a competitive process set out in subgranting procedures established by the grantee (New § 75.708);

5. Add one new selection criterion and amend two existing selection criteria that the Department may use to evaluate applications. The new criterion is used to assess the extent to which a proposed project could be brought to scale. The amendments to the general selection criteria also include the addition of five new factors to § 75.210(h) (Quality of the Project Evaluation) that could be used to assess how well a proposed project evaluation would produce evidence about the project's effectiveness. We also revised one factor and added six new factors to § 75.210(c) (Quality of the Project Design) (Amended §§ 75.209 and 75.210);

6. Authorize program offices to consider the effectiveness of proposed projects under a new priority that could be used as an absolute, competitive preference, or invitational priority (New § 75.266); and

7. Allow the Secretary to fund data collection periods after the end of the substantive work of a project so that project outcomes could be assessed using data from the entire project period (Amended §§ 75.250 and 75.251).

Costs and Benefits: The Secretary believes that these regulations do not impose significant costs on entities that would receive assistance through Department of Education programs. Any costs imposed on applicants by these regulations are limited to the paperwork burden involved in preparing an application and keeping records needed to track progress on meeting performance measures. The benefits of implementing them outweigh any costs incurred by applicants.

The benefits of the amendments in these regulations for the use of performance measures, baseline data, and performance targets established by the Department or by grantees themselves are that the Department would collect meaningful data that could be used to select applications for funding and assess the success of individual projects. The Department will also use these data to report to the Congress and the Office of Management and Budget (OMB) on the success of the grant programs in achieving their legislative objectives. The Department's strengthened capability to evaluate the success of Department programs should help improve the effectiveness of those programs and improve transparency about how public funds are expended, without imposing additional costs on grantees or other parties.

Additionally, these final regulations add a new § 75.135 and amend § 75.708 regarding subgranting and competition exceptions. These sections will reduce costs, increase benefits, and potentially improve project quality by removing barriers that impede grantees from working with, either through a contract or a subgrant, implementation partners and service providers identified in funded applications. These final regulations will relieve grantees of the costs of administering competitions without reducing accountability or increasing the risk of improper use of or accounting for grant expenditures.

These regulations also provide the Department with greater flexibility in conducting grant competitions by allowing for the use of selection criteria that: (1) Are closely aligned with program objectives and priorities, and (2) promote policy objectives such as project evaluation, sustainability, productivity, and strategy to scale. Thus, these amendments will benefit applicants, the Department, and the public by allowing the Secretary to establish selection criteria that are concise and closely aligned with the goals and objectives of a particular grant competition and are focused more

closely and coherently on the intended programmatic and policy outcomes. Because the new, more specific criteria will be used instead of the more generic criteria currently in EDGAR, the regulations will generate these benefits without increasing the costs for applicants, grantees, or the Department.

On December 14, 2012, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (77 FR 74392).

This document includes three revisions from the NPRM. We discuss changes from the NPRM in greater detail in the *Analysis of Comments and Changes.* Specifically, we have revised § 75.135 to make it clear that grantees may exercise the competition exception when procuring services from entities in instances where the entity is identified in the funded application. We have also revised the definitions of ''strong evidence of effectiveness'' and ''moderate evidence of effectiveness'' in § 77.1 to clarify that only studies with unfavorable outcomes that were so substantial as to call into question the potential effectiveness of the proposed project would disqualify the evidence from meeting the condition in the definitions. We do not discuss minor technical or editorial changes.

*Public Comment:* In response to our invitation in the NPRM, 38 parties submitted comments on the proposed regulations. We group major issues according to subject. *Analysis of Comments and Changes:* An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

**Information Regarding Performance Measurement—§ 75.110**

*Comments:* One commenter agreed with the proposed amendment to create § 75.110, stating that establishing performance measurement requirements in a notice inviting applications for a competition would both increase the likelihood of obtaining more robust data on grantee performance and increase the number of rigorous evaluation studies in the field.

Some commenters agreed with the proposed amendment but requested clarification on key points. One commenter expressed concerns that performance measures beyond those related to student achievement would not be considered. Another commenter suggested differentiating between performance measures and outcomes data, indicating that performance measures help grantees continuously improve their projects, while outcomes data are useful in evaluating the success of their projects. The commenter also suggested developing a list of indicators for applicants to use when defining and adopting their own measures of success. Another commenter noted the importance of aligning performance measures with program goals and taking into account the size and scope of each proposed project when evaluating the quality of the performance measures.

Two commenters expressed support for the proposed amendment, but they suggested that special considerations be made for applicants with limited capacity to analyze and collect data and recommended that these applicants be permitted to use grant funds and additional planning time in order to meet the performance measurement requirement.

One commenter expanded on the idea of allowing grantees to use grant funds for performance measurement by suggesting the inclusion of a provision for performance measurement expenses in part 75, subpart F.

*Discussion:* We agree with the commenter that the proposed amendment on performance measurement will strengthen the quality of data provided by grantees on their projects. Grantees typically report performance measures specific to their projects. Because those performance measures vary significantly, even among projects supported under one competition, it is very difficult for the Department to track the overall success of a program without performance measures that apply to all projects funded under a particular program's competition. By requiring standard performance measurements in a notice inviting applications, and by retaining the applicant's ability to set additional project-specific measures, we are more likely to obtain data that are meaningful both to evaluate the overall program and the quality of each grant funded under a competition for that program. This allows us to more effectively measure each program's effectiveness, as required by the Government Performance and Results Act of 1993 (GPRA), and will provide the Department a mechanism to hold grantees accountable for their performance and their success in implementing their grants.

We also agree that it is important to consider performance measures beyond those related to student achievement. While Department programs share a common focus on improving academic achievement for students, many programs focus on factors that may not directly relate to students, such as professional development for teachers or engaging parents and family members in the school community. With this in mind, § 75.110 gives the Department flexibility to set standard performance measurement requirements for all types of programs, not just programs that measure student performance, while continuing to invite applicants to set additional project-specific measures. Therefore, this regulation will allow the use of a variety of performance measures. While we explicitly require that grantees collect and report on GPRA-mandated performance measures, which may be focused on student achievement, grantees retain the discretion to establish additional performance measures uniquely related to the objectives of their proposed projects.

We recognize that some grantees may have limited capacity to meet the performance measurement requirement and acknowledge that this may appear to disadvantage small local educational agencies (LEAs), rural LEAs, community colleges, and small nonprofit organizations in particular. We suggest that when preparing an application, an applicant assess its needs and develop its proposed budget accordingly. For example, an applicant that lacks sufficient resources to collect and analyze data on its own may request funding to obtain data collection and evaluation services from external providers. Neither current regulations nor these new regulations prohibit an applicant from including in its project budget support for data collection and analysis. If an applicant decides to procure these services from a contractor, the applicant must meet the procurement requirements authorized under new § 75.135(b), including identifying the proposed contractor in the application. See discussion of § 75.135 under Procurement and Subgrant Process for Entities Named in Applications.

We agree that performance measures should be aligned with the goals of the Department program and that useful measures will take into account the expected scope and size of each proposed project. Regarding the comment suggesting that we amend § 75.110 to list specific program-aligned performance measures, we do not think § 75.110 is the most appropriate platform for enumerating specific, program-aligned performance measures. The purpose of the amendments to § 75.110 is to permit the Department to establish performance measures in the notice inviting applications and to establish standard performance measurement requirements that all applicants for a particular Department program must use, while still allowing

applicants the flexibility to suggest other, more project-specific, performance measures. Also, given the variety of programs to which these regulations apply, we do not think it is appropriate to prescribe a list of indicators in the regulation. We think that Department program officials are in the best position to establish appropriate performance measurement indicators for particular grant competitions and need the discretion to change the measures as the program evolves. In addition, more detailed information on indicators for a particular Department program will be provided in each notice inviting applications than can be provided through the use of generic performance measures listed in a regulation.

Finally, we agree that performance measures and outcomes data are two separate terms, but we want to clarify that both are necessary and important to the continuous improvement and success of a grant. ''Performance measure'' is defined as any quantitative indicator, statistic, or metric used to gauge program or project performance. Thus, a performance measure is a unit for measuring outcome data. By selecting the appropriate measures, we can ensure that the outcome data collected by grantees are relevant to program performance and that the Department has the data needed to report program performance information to the Congress under GPRA. Further, we expect that grantees will collect outcome data not only at the end of a project, but in the interim as well. Formative outcome data are collected and analyzed throughout the project period and are useful for the continuous improvement of the project, while summative outcome data are collected and analyzed at the end of the project period and are useful when evaluating the project's overall impact. Performance measures are expected to inform both types of outcome data.

*Changes:* None.

*Comments:* Some commenters expressed concern that the proposed changes to § 75.110 would unfairly disadvantage small, rural, and economically disadvantaged LEAs that may have limited access to data or limited resources to collect data. Commenters requested that we clarify how performance measures, baseline data, performance targets, and performance data will be set, and by whom they will be set.

Some commenters expanded on this suggestion, requesting that we solicit LEAs or field experts for input on defining performance measures, baseline data, performance targets, and performance data.

Some commenters did not agree with the proposed change and expressed concern that it would prove too costly and burdensome for grantees. One commenter did not agree with the proposed regulation because, according to the commenter, the performance measurement requirement would be too costly and would not ultimately improve services for students.

*Discussion:* While we recognize that all applicants may not have equal resources to collect and report performance measurement data prior to receiving a grant, each applicant should assess its capacity when writing its application and develop its budget proposal accordingly. An applicant may include funds in its project budget to support data collection and analysis. Applicants can use the exception in § 75.135 to procure the needed expertise to collect the appropriate data and evaluate the outcomes under the measures established for the competition.

Performance measures must be aligned to the goals of the program, which are based on the law and the Department's regulations and policies. As such, performance measures for a particular program are generally set by the Department officials responsible for the program. We appreciate the opinions of LEA representatives and field experts and encourage interested parties to comment on notices of proposed priorities; however, performance measures must ultimately align with program goals so the Department can measure the effectiveness of its programs.

Gathering reliable and valid information on project outcomes is an integral part of determining which processes, products, strategies, and practices are working for students and which are not. While these final regulations may require grantees to use a portion of project funds on measuring performance, we consider it to be an important investment that will ultimately lead grantees to more successful results and thereby improve results for students and help the Department report more meaningful information to the Congress on the benefits of the Department's programs, as required under GPRA.

*Changes:* None.

**Procurement and Subgrant Process for Entities Named in Applications—§ 75.135 Competition Exception for Implementation Sites, Implementation Partners, or Evaluation Service Providers; and § 75.708 Prohibition on Subgrants**

*Comments:* Several commenters expressed strong support for the proposed changes to §§ 75.135 and 75.708. Many of these commenters recommended that the Secretary allow grantees to make subgrants without approval from the Secretary. The commenters stated that individual grantees are better positioned than the Secretary to determine whether they need to make subgrants to carry out their projects, what types of entities may receive subgrants, and how the subgrants would be made. One commenter suggested revising the regulation to provide that subgrants should always be allowed unless the Department decides to prohibit it in certain circumstances. The commenter thought that formulating the regulation in this manner would encourage public-private partnerships while preserving the Secretary's authority to prohibit subgranting when necessary. One commenter argued that providing direct authority to grantees to identify and administer subgrants would reduce the administrative burden of seeking approval from the Department. Another commenter indicated this flexibility is necessary to mitigate implementation delays in instances when the publication of the notice inviting applications in the **Federal Register** is not timely. The commenter noted that State educational agencies (SEAs) particularly need this flexibility and suggested adding a new paragraph that allows a State's Chief School Officer to determine the types of entities that may receive subgrants and the procedures for making subgrants within the State.

Some commenters also recommended that the regulation specifically identify SEAs, institutions of higher education (IHEs), and nonprofit organizations as types of entities that may be awarded a subgrant. One commenter proposed adding for-profit entities as a type of entity that may be awarded a subgrant. The commenter noted the inclusion of for-profit entities is particularly important considering that many grants are designed around a product or service that will be provided by a for-profit entity and emphasized that grantees should identify partners or providers based on the needs of their projects without consideration for the corporate status of a partner or provider.

*Discussion:* We appreciate the commenters' support for the changes regarding subgranting. However, we decline to make the revisions suggested because it is prudent and necessary for the Department to maintain control over when § 75.708 is used. The Department must ensure that subgrants are only authorized and used in a manner and under circumstances that are consistent with the requirements and purposes of authorizing statutes. This objective can only be met if the Department retains control over authorizing the grantee's use of subgrants. We note however, that under § 75.708 the Secretary will indicate through an announcement in the **Federal Register** whether subgrants can be made to entities identified in an approved application or can be made to entities selected through a competitive process included in the grantee's application. Thus, in lieu of requiring a grantee to identify all entities that will receive subgrants in the approved application, the Secretary may allow a grantee to use a competitive process that it describes in the approved application to determine the entities that will receive subgrants.

With regard to the comment suggesting that for-profit entities be allowed to receive subgrants, we note that grantees already have the authority to enter into contracts with for-profit entities. Additionally, we think that procurements are the appropriate vehicle for grantees to use to secure goods and services from for-profit entities. For that reason, we decline to revise the regulations to allow subgrants to for-profit entities. However, we agree that there may be circumstances under which a product or service provided by a for-profit entity is integral to implementation of a project. As a result, we have revised § 75.135 to include entities that will provide a product or service that would, if removed from the grant, have a detrimental effect on the successful implementation of the grant.

*Changes:* We have revised § 75.135(b) to clarify that when entering into a contract for data collection, data analysis, evaluation services, or essential services, as defined in paragraph (f) of this section, an applicant may select a provider using the informal, small-purchase procurement procedures in 34 CFR 80.36(d)(1), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if—

(1) The contract is with the data collection, data analysis, evaluation service, or essential service provider;

(2) The data collection, data analysis, evaluation service, or essential service provider that the applicant proposes to use is identified in the application for the grant; and

(3) The data collection, data analysis, evaluation service, or essential service provider is identified in the application in order to meet a statutory, regulatory, or priority requirement related to the competition.

We have also added paragraph (f) to state that, for the purposes of this section, *essential service* means a product or service directly related to the grant that would, if not provided, have a detrimental effect on the grant.

*Comment:* One commenter recommended that the Department broadly implement the authority to allow subgrants. The commenter suggested that the Ready To Learn (RTL) program is particularly well-suited for the use of subgrants given that subrecipients of RTL grantees are often responsible for the development and production of educational programming that is integral to the grant. According to the commenter, subgranting will both continue to ensure close monitoring of funds and foster close collaboration that will further project objectives.

*Discussion:* As noted elsewhere in our responses to comments in this section, the Department cannot establish a universal rule allowing the use of subgrants because program statutes define differently whether subgrants may be used and in what circumstances they may be used. Additionally, subgrants, even when not prohibited by a statute, may not always be appropriate for a particular program.

*Changes:* None.

*Comments:* Two commenters stated that, although the proposed amendments in § 75.135 that permit exceptions to the procurement procedures are beneficial and they support them as written, some grantees may be subject to State or local laws that require specific procurement procedures. One commenter explained that such State laws and requirements negate the benefits of the proposed amendment and suggested revising the language to minimize this consequence.

*Discussion:* The proposed amendments in § 75.135 relax requirements that otherwise apply to grantees under parts 74 and 80. They do not, as the commenters noted, eliminate a grantee's responsibilities to comply with their own procurement requirements and State and local laws that exceed those required by Department regulations. State governments may follow their own procurement requirements, subject only to the requirement that they must include in their contracts all clauses required by Federal statutes, Executive orders, and implementing regulations. We note that some SEAs have adopted some of the requirements in § 80.36. Other State, local, and Indian tribal government grantees must comply with the minimum requirements in 34 CFR 80.36. Non-governmental grantees must comply with the minimum procurement requirements in 34 CFR 74.41–74.48. These final regulations do not change other applicable financial management and procurement requirements in 34 CFR parts 74 and 80, including those that require State agencies to follow their own procurement policies and procedures (34 CFR 80.36(a)) or that generally require grantees to maintain procurement procedures that prohibit conflicts of interest. The continued applicability of these requirements in parts 74 and 80 of EDGAR is crucial to ensuring accountability for the use of Federal funds by grantees.

*Changes:* None.

*Comments:* Many commenters expressed strong support for the revisions to § 75.135 and § 75.708 and agreed that the exemption from procurement requirements for selecting implementation sites or partner entities, and the use of small purchase procedures to select evaluation service providers identified in grant applications will improve the implementation and outcome of grants funded by the Department. One commenter noted that the proposed amendment would be particularly beneficial to SEAs because it will support more efficient use of resources and ensure grant activities are implemented on a timely basis.

One commenter expressed general support for the proposed amendment but recommended revising it to include a competition exception for products or services identified in the application that are unique and essential, meaning that the use of an alternative product or service would be detrimental to the implementation of the project. The commenter also suggested adding a condition that allows the use of simplified procurement procedures for products or services that are not core to the implementation of the project when the costs of conducting a competition would be excessive in relation to the amount of grant funds that would be awarded in the contract. The commenter also stated that local and State procurement requirements would still apply, so these revisions would eliminate an additional Federal requirement in these instances but

would not remove those existing protections.

*Discussion:* We appreciate the commenters' support for the proposed amendment to § 75.135 and agree it will be beneficial to grantees. With regard to the recommendation that we revise the regulation to allow grantees to use the competition exception for products and services identified in the application that are unique, we recognize that grant projects may be designed around such products or services. Therefore, we have revised paragraph (b) of § 75.135 to include an exception for entities that will provide a product or service that would, if not provided, have a detrimental effect on the grant. However, we decline to revise the regulation to reduce the competition requirements for products or services that are not identified in the application or core to the implementation of the project because we do not think such a revision is consistent with the intent of the change. We do not intend this change to limit competition in instances when full and open competition is practical. We note, however, that the simplified acquisition threshold already provides grantees some flexibility in competition requirements for procurements under $100,000. OMB has proposed to raise this threshold to $150,000 in its proposed amendments to title 2 of the CFR. See the OMB proposal, *Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act),* published on Friday, February 1, 2013, at 78 FR 7282. Thus, regardless of the exemption authorized in these final regulations, applicants will have greater flexibility to use small purchase procedures when the procurement threshold is raised. Therefore, it is not necessary or appropriate to make the changes suggested.

Also, as noted earlier, these regulations relax certain procurement requirements that otherwise apply to grantees under parts 74 and 80. Grantees should be aware, however, that these amendments do not eliminate a grantee's responsibilities to comply with its own procurement requirements and State and local laws to the extent that those requirements and laws exceed the minimum requirement in parts 74 and 80.

*Changes:* We have revised § 75.135(b) to clarify that when entering into a contract for data collection, data analysis, evaluation services, or essential services, as defined in paragraph (f) of this section, an applicant may select a provider using the informal, small-purchase procurement procedures in 34 CFR 80.36(d)(1), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if—

(1) The contract is with the data collection, data analysis, evaluation service, or essential service provider;

(2) The data collection, data analysis, evaluation service, or essential service provider that the applicant proposes to use is identified in the application for the grant; and

(3) The data collection, data analysis, evaluation service, or essential service provider is identified in the application in order to meet a statutory, regulatory, or priority requirement related to the competition.

We have also added paragraph (f) to state that, for the purposes of this section, *essential service* means a product or service directly related to the grant that would, if not provided, have a detrimental effect on the grant.

*Comment:* None.

*Discussion:* Based on the comments received, we revised § 75.135(b) to expand the circumstances under which grantees may use small purchase procedures. We have also revised § 75.135(c) to require applicants, who utilize this exception, to certify that they followed the small purchase procedures. The small purchase procedures, while not as extensive as the full procurement requirements set out in Parts 74 and 80, provide important protections to the Federal interest in the prudent and allowable use of grant funds. By requiring applicants that utilize this exception to certify that they followed the small purchase procedures, we provide increased assurance that the protections to Federal grant funds offered by those procedures are, in fact, in place.

*Changes:* We have revised the certification requirement in § 75.135(c) to require grantees that relied on the exceptions of § 75.135(b) to certify that they used small purchase procedures to obtain a product or service if the applicant relied on the exception authorized in this section to procure the product or service.

**Amendments Relating to Evidence—§ 75.210(c) Quality of the Project Design, § 75.210(h) Quality of the Evaluation, § 75.266 Consideration for Applications Supported by Strong or Moderate Evidence, § 75.590 Evaluation by the Grantee, and § 77.1 Definitions That Apply to All Department Programs**

*Comments:* Many commenters strongly supported the proposed definitions of ''strong evidence of effectiveness'' and ''moderate evidence of effectiveness'' in § 77.1(c). One commenter applauded the Department for expanding the focus on evidence-based practices and stated that this effort will result in higher quality grant applications and outcomes. One commenter noted that the strength of evidence used to support a project's effectiveness should be rigorous, objective, and pertinent to the goals of the project.

A few of these commenters suggested amendments or clarifications to these definitions. One commenter recommended clarifying that a study, in order to meet these definitions, need only meet the appropriate standards outlined in the What Works Clearinghouse (WWC) and not necessarily be reviewed by the WWC or posted on the WWC Web site. Three commenters noted that these definitions, as proposed, present a risk that a study could meet the definition even if the effects are: (1) On trivial or developer-created outcomes; (2) artificially inflated or likely a result of chance; or (3) so small in size as to be of little importance. These commenters recommended revising the definitions to clarify that the study must be of sufficient duration and sample size to represent a valid test and to require that the study find a significant favorable outcome based on a measure of clear policy importance. One of these commenters further suggested requiring that the study have a substantial and important effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and competition rates. The commenters stated that such changes avoid the loophole of classifying programs that lack policy or practical importance as evidence-based programs.

*Discussion:* We agree with the commenters that the evidence used to support a project's effectiveness should be objective and pertinent to the goals of the project. However, we also recognize that at the various stages of a proposed project's development,

different types of evidence are available to assess the effectiveness of a project. That is why we include definitions for four levels of evidence: ''Strong evidence of effectiveness,'' ''moderate evidence of effectiveness,'' ''evidence of promise,'' and ''strong theory.'' We establish these definitions in order to develop an understanding for applicants of what is required to meet each level of evidence. Combined, these four levels of evidence allow the Department to support effective projects (strong or moderate evidence of effectiveness) or projects that have a high potential to be effective (evidence of promise or strong theory).

We appreciate the commenters' concerns regarding the definitions of ''strong evidence of effectiveness'' and ''moderate evidence of effectiveness.'' However, we do not consider the proposed changes necessary as the definitions already safeguard against the risks identified by the commenters.

With regard to ensuring the outcome has policy and practical importance, both of these definitions refer to the effect on a ''relevant outcome.'' The definition of ''relevant outcome'' explains that it is the ultimate outcome of the proposed process, product, strategy, or practice and should be consistent with the specific goals of the Department program. Thus, the references to ''relevant outcome'' would not allow studies that only show effects on trivial outcomes to meet the requirements of the definitions.

Further, the WWC Procedures and Standards Handbook [1] explains that a study that does not include a valid or reliable outcome measure, or does not provide adequate information to determine whether it uses an outcome that is valid or reliable, would not meet WWC Evidence Standards. Because the WWC Evidence Standards are incorporated in these definitions, a study that only includes an outcome measure created by the evaluator or developer with weak or no validity or reliability data would not meet the requirements of the definitions.

With regard to requiring that a study has an adequate sample size to ensure that the effect is not artificially inflated, a result of chance, or so small it is of little importance, both definitions refer to the definitions of a ''large sample'' and a ''multi-site sample.'' In order for any study to meet the requirements of ''strong evidence of effectiveness,'' that study would need to have used a ''large sample'' and a ''multi-site sample.'' Under the definition of ''moderate evidence of effectiveness,'' a study must meet, among other requirements, one of the following two conditions: (1) WWC Evidence Standards without reservations; or (2) WWC Evidence Standards with reservations.[2] Although a small study that meets WWC Evidence Standards ''*without* reservations'' would meet one of these two conditions, a study that meets WWC Evidence Standards ''*with* reservations'' could only meet the requirements of ''moderate evidence of effectiveness'' if it used a ''large sample'' and a ''multi-site sample.'' We think the inclusion of ''large sample'' and ''multi-site sample'' in the definitions of ''strong evidence of effectiveness'' and ''moderate evidence of effectiveness'' appropriately mitigate the risks identified by the commenters.

With regard to ensuring that studies are of sufficient duration to meet the requirements, we note that the WWC Evidence Standards do not require a minimum study length. More importantly, because it is not clear that requiring a minimum study length is appropriate or necessary, we decline to revise the definitions to include such a requirement.

*Changes:* None.

*Comment:* None.

*Discussion:* In § 77.1(c), we have revised the definitions of ''moderate evidence of effectiveness'' and ''strong evidence of effectiveness'' by adding the phrase ''and overriding'' to the second parenthetical in paragraphs (a) and (b) of both definitions. We add this phrase to clarify that only studies with unfavorable outcomes that were so substantial as to call into question the potential effectiveness of the proposed project would disqualify the evidence from meeting the condition in the definitions.

*Changes:* We have revised the second parenthetical in paragraphs (a) and (b) of the definitions of ''moderate evidence of effectiveness'' and ''strong evidence of effectiveness'' to add the phrase ''and overriding.'' The parenthetical now reads ''with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse.''

*Comments:* One commenter expressed concern that the proposed definitions related to evidence would stifle innovation and that providing special consideration for projects supported by evidence of effectiveness would limit the pool of applications for a competition. Another commenter stated that such consideration is not appropriate for all programs and the proposed amendment appears to be an attempt to turn all projects funded by the Department into Investing in Innovation (i3) projects.

*Discussion:* The establishment of procedures to provide special consideration for projects supported by strong or moderate evidence of effectiveness provides the Secretary a mechanism to support effective projects and offer incentives to the field for building an evidence base on the effectiveness of the processes, products, strategies, and practices that are, or will be used, in education. However, as noted in our response to other comments in this discussion, we recognize that different types of evidence are available at the various stages of a proposed project's development and that there are some areas where strong or moderate evidence of effectiveness is not yet available. As such, we agree that it would not be appropriate for the Secretary to consider whether a project is supported by strong or moderate evidence of effectiveness for all Department programs. The Secretary will only provide special consideration for projects supported by strong or moderate evidence of effectiveness in programs where such evidence exists or where such incentives are meaningful. When such levels of evidence do not exist, Department program officials may consider whether using ''evidence of promise'' or ''strong theory'' would be more appropriate for spurring innovation. Thus, we do not think providing special consideration in program areas that do have these levels of evidence would preclude robust competition or stifle innovation.

*Changes:* None.

*Comments:* Three commenters expressed support for the establishment of procedures to provide special consideration for projects supported by strong or moderate evidence of effectiveness. However, these commenters suggested clarifying that the special consideration be given to both existing projects supported by strong or moderate evidence of effectiveness and new projects that are proposing to adopt or adapt models supported by strong or moderate evidence of effectiveness.

*Discussion:* The definitions of ''strong evidence of effectiveness'' and ''moderate evidence of effectiveness'' in § 77.1(c) indicate that the study needs to be of the effectiveness of the proposed process, product, strategy, or practice.

[1] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), currently found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[2] *See* definition for full description of the two possible conditions.

These definitions also clarify that the study must overlap with the populations and settings in the proposed project. Therefore, a new project that is adopting the model of the process, product, strategy, or practice in the study meets the definitions. An applicant proposing a new process, product, strategy, or practice that is adapting or changing the model from what was in the study would need to explain how the study supports the adapted version of the model. Thus, a study may be used to support an adaptation of the model in the study so long as the applicant can provide a justification that the proposed project's efficacy necessitates the adaptation, and is based upon the evidence and theory supported by the original study.

Given the variety of programs to which these regulations apply, we do not think it is appropriate for the Department to determine at what single point an adaptation would make the study no longer credible for supporting the effectiveness of the proposed project. However, any programs providing special consideration for projects supported by strong or moderate evidence of effectiveness would provide instructions to applicants on the information they need to submit to demonstrate that they meet the applicable evidence level.

*Changes:* None.

*Comment:* One commenter recommended providing special consideration only for projects supported by strong or moderate evidence of effectiveness through the establishment of a separate competition, as opposed to ''an across the board competitive preference.''

*Discussion:* Section 75.266 authorizes the Secretary to establish a separate competition or provide a competitive preference for applications supported by strong or moderate evidence of effectiveness. We decline to limit the Secretary to providing special consideration through a separate competition because that process may not be appropriate for all Department programs. Given the variety of programs to which these regulations apply, it is important that we provide sufficient flexibility for determining which programs require, and how the Secretary would consider, strong or moderate evidence of effectiveness.

*Change:* None.

*Comment:* One commenter noted that projects funded by the Department should produce evaluations that meet defined standards but questioned whether the WWC Evidence Standards were appropriate considering the burden associated with conducting evaluations that are designed to meet those standards. Specifically, the commenter expressed concern that small or rural LEAs would not have the capacity to conduct such evaluations and that the Department's use of selection factors promoting WWC Evidence Standards would favor large research organizations over LEAs. The commenter further stated that it is contradictory for the Department to use selection factors that promote evaluations more rigorous than required by the program. To address these concerns, the commenter recommended revising § 75.210(h)(2)(viii)–(x) to require that the proposed project evaluation meets the next level higher or equivalent level of the prior evidence supporting the proposed project's effectiveness.

*Discussion:* The WWC is an initiative of the Department's Institute of Education Sciences (IES) and serves as a central and trusted source of scientific evidence for what works in education. Although we recognize the WWC Evidence Standards primarily refer to randomized controlled trial (RCT) and quasi-experimental design (QED) studies, we also note that these designs are the most rigorous and defensible methods for producing unbiased evidence of project effectiveness.

We agree with the commenter that conducting project evaluations that are designed to meet the WWC Evidence Standards requires planning and resources. However, because an applicant may obtain an evaluation service provider to conduct the project evaluation through a contract and may include these activities and costs in its proposed project budget, the use of the factors in § 75.210(h)(2)(viii)–(x) would not inherently disadvantage an applicant that lacks the internal capacity to conduct such evaluations. We also note that § 75.210(h) (Quality of the Project Evaluation) is only one criterion among multiple criteria used to evaluate applications. The Department considers each program's purpose, goals, and applicant pool when deciding which selection criteria and factors to use in a given year's competition. By creating these factors under § 75.210(h) (Quality of the Project Evaluation), the Department has the option—not the obligation—to use them to encourage applicants to propose project evaluations that would meet WWC Evidence Standards. Consequently, the Department will use these factors when appropriate for a particular competition and will not use them when doing so would conflict with required program evaluations.

We decline to replace these factors with a factor that would allow a proposed project evaluation to be the equivalent level of the prior evidence supporting the proposed project's effectiveness. In general, to provide the public the greatest return on its investment, evaluations funded by the Department should build on prior research, as appropriate. Although we recognize the importance of replicating results of a past study, we think it is important for applicants to propose project evaluations that increase the level of evidence of the proposed project's effectiveness, as appropriate. By providing the flexibility to select among the various factors under § 75.210(h) (Quality of the Project Evaluation), the Department has the discretion to select factors that are appropriate for the areas of study and research goals for a particular program.

*Changes:* None.

*Comments:* Two commenters indicated they had no objections to the proposed changes to §§ 75.210, 75.266, and 77.1 regarding evidence of effectiveness and WWC Evidence Standards, but cautioned the Department to be prudent in their use in discretionary grant competitions. One commenter stated that lack of evidence should not be the sole rationale for deciding not to make a grant to a particular applicant and suggested that the new regulations should not be used to establish a high threshold for evidence of effectiveness in areas where the amount of evidence on existing practice is not strong, particularly in areas that are difficult to measure, such as school climate or efforts to reduce administrative burden or build capacity. Similarly, another commenter recommended that programs establish thresholds for evidence of effectiveness that are commensurate with the quantity and quality of existing evidence in the field.

*Discussion:* We agree that the new regulations in §§ 75.210, 75.266, and 77.1 regarding evidence of effectiveness should only be used when appropriate for a particular program. We are making changes to these regulations to support evidence-based grant making in areas where evidence exists and to provide incentives and opportunities to build the body of evidence of effectiveness in education.

*Changes:* None.

*Comments:* Several commenters noted the distinction between a ''project'' and a ''strategy within a project.'' The commenters stated that it might be more appropriate for the Department to evaluate the effectiveness of an individual strategy used by a grantee

rather than attempt to measure the effectiveness of a project as a whole. The commenters suggested revising the proposed selection criteria to clarify that programs or strategies could be used when evaluating a project's effectiveness.

*Discussion:* An applicant may propose to evaluate different strategies within a project using different evaluation design methods. For example, an applicant may propose a pre-post analysis to assess progress of one strategy within its project and a more rigorous evaluation design for another strategy within its project. Despite the flexibility we allow an applicant in designing the proposed project evaluation, under § 75.590 (Evaluation by the grantee), the entire project being supported by Federal funds must be evaluated.

*Changes:* None.

*Comments:* A few commenters stated that they could not support the inclusion of selection factors that consider evidence of effectiveness because it would competitively disadvantage certain types of applicants, including those with limited resources or those that serve student populations that have unique needs.

Two commenters specifically suggested that the consideration of effectiveness would present a disadvantage to community colleges. One commenter discussed three challenges for community colleges that make it difficult for them to conduct rigorous evaluations. According to the commenter, rigorous evaluation designs (1) distract from community colleges' missions to provide access to education for all students; (2) often require approval of an Institutional Review Board (IRB), and many community colleges have not established IRBs; and (3) require signed consent from participants, which creates additional complications and concerns regarding student access to educational programs or support services. Both commenters stated that most studies posted on the WWC Web site focus on K–12 education and that existing research around community colleges is insufficient for them to compete if factors related to evidence of effectiveness are used by the Department. To address this concern, one commenter recommended creating a special track of priority funding for empirical research on community colleges in all of the Department's postsecondary programs.

One commenter suggested modifying the new selection factors to exempt programs with ''historical evidence of benefit to students.'' The commenter stated that programs that equalize educational opportunity among low-income, first-generation college students who, in large part, are from underrepresented groups, should not be required to use quantitative research to determine their effectiveness.

One commenter stated that programs providing parental training and engagement services would be disadvantaged by selection factors related to evidence of effectiveness because such programs require a focus on individual parent and family needs. The commenter expressed concern that the use of these selection factors, or any special consideration given for evidence of effectiveness, would limit which entities could apply to a particular program without providing a clear benefit to children and their families. Another commenter suggested that the selection factors referring to ''evidence of promise'' and ''strong theory'' be the only selection factors related to evidence of effectiveness used for implementation-based grants.

*Discussion:* As noted elsewhere in our response to comments in this discussion, we agree that the selection factors relating to evidence of effectiveness, whether they fall under § 75.210(c) (Quality of the Project Design) or § 75.210(h) (Quality of the Project Evaluation), should only be used when appropriate for a particular program. We include these selection factors to support evidence-based grant making in areas where evidence exists and to provide incentives and opportunities to build the body of evidence of effectiveness in education.

Because the Department has the discretion to select factors that are appropriate for the areas of study and research goals of a particular program, and therefore would not select factors that would require applicants to provide evidence of effectiveness in areas that have not been widely researched, we decline to remove these factors. Additionally, we do not think the amount of research for a particular area of education on the WWC Web site is a reason not to add these factors to the regulations. A study does not need to be reviewed by the WWC or posted on the WWC Web site to meet the WWC Evidence Standards. Department program officials could use research available on the WWC Web site or from other sources to inform their decision on whether these selection factors are appropriate for the particular program.

Further, we note that these factors address evidence of effectiveness and evaluation of effectiveness at various levels. Two of the factors refer to grantees proposing evaluation designs that meet WWC Evidence Standards with or without reservations, but we also include two other factors that refer to ''evidence of promise'' and ''strong theory.'' Including four levels of evidence provides the Department the opportunity to consider the level of evidence available in the field for the types of projects to be funded by the relevant program and the capacity of potential applicants to design evaluations that would assess the effectiveness of a project at these different levels.

With regard to the other issues raised by the commenters, we recognize that rigorous evaluation designs require grantees to compare individuals participating in the project to those who are not participating in the evaluation. However, requiring more rigorous evaluation designs does not contradict the educational mission of serving all students because evaluating the effectiveness of a particular intervention is necessary to understand which interventions effectively improve student outcomes. Although funds that support evaluation services cannot also support direct services to students, investing in evaluation allows entities to focus finite resources on only those processes, products, strategies, or practices that are most effective in improving student outcomes. Therefore, we do not think evaluating the effectiveness of a project using a rigorous design would impede an entity from carrying out its educational mission. Further, because an applicant may contract to obtain an evaluation service provider that has access to an IRB to conduct the project evaluation, and because the applicant may include these activities or activities related to accessing an independent IRB or establishing its own IRB to support the project evaluation and their costs in its proposed budget, we do not think applicants that lack their own IRBs are disadvantaged. Similarly, because under the Common Rule for the Protection of Human Subjects, an IRB can modify or waive requirements for written consent, and the costs for activities to obtain written consent from participants may be included in the proposed budget, we do not think a specific type of entity is inherently disadvantaged by the use of selection factors that encourage applicants to propose rigorous evaluations of their projects' effectiveness.

With regard to the comments recommending that these factors not be used for programs that historically have benefited students and that we only allow the use of ''evidence of promise'' and ''strong theory'' for implementation grants, we reiterate the importance of the Department supporting the

improvement of information available to practitioners and policymakers about which practices work, for which types of students, and in which contexts. These selection factors support that goal by providing incentives to applicants for grants to build an evidence base on the effectiveness of the processes, products, strategies, and practices that are, or will be used, in education.

*Changes:* None.

*Comments:* A few commenters stated that the Department should not support evaluations using research designs that include control groups. Two commenters stated that experimental designs are unethical because they require grantees to withhold treatment from students in public education. Another commenter felt that it was inappropriate to deny services to students simply to accommodate research and evaluation, particularly when the Congress authorized and funded the program to provide services to students. One commenter further expressed concern that favoring such designs would provide an advantage to large research organizations over LEAs that lack the capacity to conduct such evaluations.

In addition to concerns about placing students or teachers in ''experimental'' versus ''control'' groups, one commenter cited challenges regarding the use of RCTs. Specifically, the commenter noted that a pure control condition is rare because fidelity of implementation can significantly impact the effectiveness of a process, product, strategy, or practice. The commenter indicated that how well a particular process, product, strategy, or practice works depends on the conditions under which it is implemented, and the costs of observation and metrics to determine the fidelity of that implementation are significant. The commenter also noted that, because products and services are constantly changing and improving, the products or services are frequently no longer available in the format or version that was studied by the time an evaluation is complete. The commenter concluded that equal consideration of alternative study designs, such as regression discontinuity designs, is needed to ensure the Department does not limit the development, implementation, and evaluation of innovative projects.

One commenter expressed concern that the selection factors that refer to ''evidence of promise'' and ''strong theory'' would be used to make all implementation projects into randomized research projects with control groups. According to the commenter, these selection factors would skew successful applications toward projects conducting research studies and away from projects providing services to students and teachers. The commenter stated that to require such project evaluations is not consistent with legislative intent and would not result in improved student outcomes. Another commenter made a similar statement that the proposed amendments regarding evidence of effectiveness and evaluation should not be used for the TRIO programs because they would undermine the intent of the Higher Education Opportunity Act of 2008.

*Discussion:* We appreciate the commenters' concerns about whether it is ethical to evaluate the effectiveness of a project using a randomized experimental design. In order to ensure ethical research, the Department, under the Common Rule for the Protection of Human Subjects in Research (34 CFR 97), does not permit covered human subjects research to be initiated until it has been reviewed by an IRB and receives the Department's protection of human subjects clearance. Although we recognize that conducting these types of evaluations can be difficult, we also recognize that random assignment of entities (students, teachers, schools, or other units of analysis) to a treatment or control group is the most effective way to eliminate plausible competing explanations for observed differences between treated and non-treated individuals or groups (i.e., the estimated treatment effect). Two common strategies used in randomized experiments in education that are designed to address this ethical concern are the use of a ''wait-list'' control group and the assignment of schools, rather than students, to the treatment group. Despite the challenges in conducting such evaluations, we consider it important to provide a mechanism for the Department, when appropriate, to use these selection factors to encourage grantees to conduct evaluations of their projects that will improve the information available to practitioners and policymakers about which processes, products, strategies, and practices work, for which types of students, and in which contexts.

We disagree that the regulation would favor large research institutions over other types of applicants. Applicants that do not feel they possess adequate resources to carry out a rigorous evaluation of their proposed projects may contract with an evaluation service provider. Applicants can use the exception in § 75.135 to procure the needed expertise to implement a rigorous evaluation.

We disagree with the comment that the use of selection factors referring to ''evidence of promise'' and ''strong theory'' requires all implementation projects to become randomized research projects with control groups. We define ''strong theory'' to mean a rationale for the proposed process, product, strategy, or practice that includes a ''logic model'' (as defined in § 77.1(c)). The development of a logic model and the associated rationale does not require a grantee to conduct a randomized experiment. Similarly, although a grantee may use a QED or RCT to meet the ''evidence of promise'' definition, a grantee could also use a correlational study with statistical controls. Thus, neither evidence level requires the use of a treatment and control group. See § 77.1(c) for definitions of these terms.

Although we appreciate that products and services change over time and may no longer be available in the format or version that was studied by the time an evaluation is complete, these selection factors are intended to provide incentives to applicants for grants to build an evidence base on the effectiveness of the processes, products, strategies, and practices that are, or will be used, in education. As noted elsewhere in our discussion of comments related to evidence of effectiveness, an applicant may use a study of a product or service to support an adaptation of it so long as the applicant can provide a justification that the proposed project's efficacy necessitates the adaptation, and is based upon the evidence and theory supported by the original study. This same concept applies to the potential for learning from a project evaluation of a product or service that may no longer be available in the format or version that was studied by the time an evaluation is complete. Moreover, the selection factor regarding ''evidence of promise'' does allow consideration of alternative study designs.

With regard to commenters' concerns about the Department requiring the use of evaluation designs that are in conflict with a program's statute, the Department does not propose or require grantees to use grant funds in a manner that is prohibited by statute. As noted elsewhere in our responses to comments in this section, the Department has discretion in determining which selection factors are most appropriate for a particular program's purpose and goals. Therefore, the Department would not use a selection factor that is in conflict with a program's governing statute, purpose, or goals.

*Changes:* None.

*Comments:* Several commenters recommended including a selection factor under § 75.210(h) (Quality of the Project Evaluation) to promote evaluative methods for small service delivery programs. Specifically, the commenters requested the addition of a selection factor for studies that assess or use best practices for service delivery strategies using small-scale pilots.

*Discussion:* We agree that a selection factor that encourages project evaluations of pilot strategies that may be best practices is of value, and we have included § 75.210(h)(2)(xii) for this purpose. This selection factor supports project evaluations that clearly articulate the key components and outcomes of the grant-supported process, product, strategy, or practice, as well as the measurable threshold for acceptable implementation. Implementation studies that articulate the key components of the proposed project and the measureable threshold for acceptable implementation of the key components are necessary to disseminate information about and replicate best practices. These studies also could be used to evaluate a pilot of service delivery strategy. Because § 75.210(h) (Quality of the Project Evaluation) and other existing factors under this criterion provide for the type of evaluation proposed by the commenter, we do not think it is necessary to create a factor for the evaluation of a specific type of project.

*Changes:* None.

**Selection Criteria Based on Statutory or Regulatory Provisions—§ 75.209**

*Comment:* One commenter agreed with the proposed changes to § 75.209 but suggested including a clause that explicitly allows for successful applicants to be able to adjust their projects based on a continuous improvement model. The commenter noted that this change would allow grantees to use formative evidence and research to adjust their projects as needed, resulting in better outcomes overall.

*Discussion:* We agree that continuous improvement models are useful. In fact, grantees currently address their lessons learned during the implementation of the project and discuss how they can continuously improve their projects in their annual performance reports to the Department. The regulations do not prohibit a grantee from adjusting its project as needed, provided that the scope or objectives of the project are not changed. Our intent in the changes to § 75.209 is to provide the Secretary the flexibility to use selection criteria related to a program's statute or regulations in notices inviting applications.

*Changes:* None.

**General Selection Criteria—§ 75.210**

*Comments:* Many commenters expressed general concern over the proposed changes to § 75.210(c) (Quality of the Project Design) without focusing on any one proposed factor. Some noted that the proposed selection factors under § 75.210(c) are not widely applicable to all Department programs and that some selection factors may unfairly disadvantage some applicants. For example, one commenter asserted that the proposed selection factors will not improve student outcomes and are therefore unnecessary. Another commenter expressed concern that the proposed selection factors allow the Secretary too much discretion when designing competitions and that the intent and purpose of some already-established programs could be compromised.

Alternatively, one commenter suggested that many of the proposed selection factors rely too much on peer reviewer subjectivity and further that inter-rater reliability between peer reviewers would be difficult to achieve if these factors are used in a competition.

*Discussion:* We agree that each selection factor in § 75.210(c) (Quality of the Project Design) is not applicable to each Department program. There is no requirement that the Department use each selection factor listed in § 75.210(c) (Quality of the Project Design) for every program or competition. We rely on Department program officials to choose the selection factors for their programs prudently, with the capacity of applicants in mind, such that the selection factors used will appropriately match the goals of the program.

As part of the discretionary grant process, we depend on peer reviewers for their objectivity and professional expertise. The Department trains peer reviewers on the details of the particular program, and monitors peer reviewer discussions to ensure that reviewers make scoring decisions based solely on the selection criteria provided in the notice inviting applications. While the Department takes these steps to support inter-rater reliability, we also rely on the professional judgment and expertise of peer reviewers when evaluating applications.

Although some factors may not directly relate to student achievement, we disagree with the comment that the new selection factors in § 75.210(c) (Quality of the Project Design) will not improve student achievement. Each factor requires applicants to approach the design of their projects in ways that will increase efficiency, productivity, and overall success. Increased student achievement will result from a Department competition's use of selection factors that better allow grantees to implement their projects effectively.

*Changes:* None.

*Comment:* One commenter agreed with the proposed change to § 75.210(c)(2)(xvi) regarding integration of a proposed project with similar or related efforts. The commenter stated that emphasizing integration efforts within the grantee's community would increase the likelihood of a successful project. The commenter noted that this proposed factor is particularly appropriate for public charter schools, given their unique positions in their communities.

Some commenters expressed concern that the proposed change to § 75.210(c)(2)(xvi) would disadvantage nonprofit entities. These commenters noted that nonprofit entities do not necessarily have control over State or Federal funding streams and may have difficulty securing willing community partners. One commenter expanded on this concern, and suggested that we clarify that the integration of existing funding streams only be considered to the extent practicable for applicants. Similarly, another commenter noted that in some high-need areas, opportunities to partner with funding organizations simply do not exist.

One commenter suggested that § 75.210(c)(2)(xvi) regarding increased efficiency and productivity and (xxvii) regarding using nonpublic funds or resources to build on similar or related efforts be used only as competitive preference priorities. The commenter stressed that the proposed selection factors could disadvantage small and rural LEAs, and potentially eliminate applicants with otherwise strong responses to the criterion due solely to their inability to secure other sources of funding. The commenter also warned that a nonpublic entity may have its own agenda when agreeing to partner with an applicant, possibly complicating the nature of the partnership.

One commenter expressed concern that nonpublic funds and resources were given favor in § 75.210(c)(2)(xxvii). The commenter argued that integration of resources is important regardless of their source, be it public or private. Based on this argument, the commenter suggested the selection factor be removed.

*Discussion:* We agree that the proposed selection factors will increase the likelihood of grantee success in implementing their projects. Requiring an applicant to create partnerships with community, State, or Federal partners establishes early on that project sustainability is an important factor for success, in the event that the proposed project is awarded grant funds.

We recognize that establishing partnerships with community organizations may be challenging for some grantees, particularly those based in high-need areas. However, we would like to clarify that, under amended selection factor § 75.210(c)(2)(xvi), a grantee is not limited to using organizations based in its community when selecting partners. Grantees may choose to integrate or build on the related efforts of other programs based anywhere in the country, assuming that the goals and efforts of such programs align appropriately with those of the grant.

We also recognize that small and rural LEAs may experience challenges when responding to the selection factor. We would like to stress that this change to the selection criterion in § 75.210(c) (Quality of Project Design) does not require its use in each Department competition. The Department chooses appropriate selection factors based on the intended goals of the program and the expected capacity of applicants.

We disagree that changing the proposed selection factors into competitive preference priorities would prove more favorable for small and rural LEAs. Competitive preference priorities, by providing grantees who address them with an advantage over those who choose not to do so, can be decisive in determining which applicants receive grants. Therefore, it is not clear that considering the integration of other funding streams as a competitive preference priority, as opposed to a selection factor, would address the commenter's concern.

Nonprofit entities, while typically not in a position to control State or Federal funding streams, do have options available to them to address § 75.210(c)(2)(xvi). This selection factor considers the extent to which an applicant has secured partners to build on similar efforts. A nonprofit entity, if it were eligible to apply for funding in a Department program, could collaborate with an LEA, which is likely receiving State and Federal funding, on a mutually beneficial project that aligns with the goals of the Department program.

While we agree that § 75.210(c)(2)(xxvii) regarding integrating with or building on related efforts may not be appropriate for some Department programs, we are retaining it because there are Department programs in which it would be beneficial. Because the use of this selection factor is not required for use in all Department programs or competitions, we think the best approach to addressing this concern is for the Department to use the selection factor in only those programs for which it is appropriate.

In response to the concern that a nonpublic entity may take advantage of an applicant and complicate the nature of the partnership to promote its own agenda, applicants applying to a competition in which § 75.210(c)(2)(xxvii) is a selection factor should use their best judgment in evaluating potential partners and only enter into formal relationships with entities that share their goals. This is generally a prudent practice, whether the applicant is choosing to partner with a public or a nonpublic entity, and should be followed in any competition that requires an applicant to work with a partner, even if § 75.210(c)(2)(xxvii) is not a selection factor.

*Changes:* None.

*Comment:* Some commenters praised the proposed selection factor § 75.210(c)(2)(xxiv) regarding resources for operating a project beyond the length of the grant. Commenters also supported § 75.210(c)(2)(xxv), which asks applicants to describe the potential and planning for the incorporation of project purposes and activities into the ongoing work of the grant. These commenters stated that grant funds should not be awarded in cases where long-term funding is needed but not secured and that asking an applicant to explicitly address how it plans to continue the project after the completion of a grant award will help to ensure long-term success.

Two commenters expressed agreement with the proposed changes to § 75.210(c)(2)(xxiv) and (xxv), but suggested some further modifications. One commenter suggested that we consider whether applicants have effectively worked to build a market for educational services. Another commenter suggested that when considering the extent to which an applicant has secured resources to sustain the project beyond the grant period, we also consider whether the applicant has demonstrated evidence of broad stakeholder commitment to the project.

One commenter agreed that it is critical that grantees plan their projects with sustainability in mind but did not agree with the addition of selection factors § 75.210(c)(2)(xxiv) and (xxv), arguing that the current state of the economy is not stable enough to ensure that resources committed at the time an award is made would still be available at the end of a grant period. Another commenter noted that the proposed changes could disadvantage community colleges and proposed that we consider an applicant's cost per student when using proposed selection factors related to sustainability. The commenter stated that applicants working with fewer resources per student need more flexibility in adhering to the requirements outlined in selection factor § 75.210(c)(2)(xxiv).

*Discussion:* We agree that long-term planning and broad stakeholder support are integral to a grantee's successful project. The amendments to § 75.210(c) (Quality of the Project Design) will allow for flexibility when assessing an applicant's plan to sustain its project after the grant period ends. With added flexibility in § 75.210(c), the Department may choose to fund applications that have a strong focus in effective and sustainable practices.

We recognize that some applicants, such as community colleges, may operate with fewer resources per student than other types of applicants. However, the regulations do not prohibit such an applicant from requesting funds in its budget proposal to support the proposed project fully. If an applicant assesses its resources and finds that it requires more funds per student to carry out the project and address selection factor § 75.210(c)(2)(xxiv), that applicant should plan its budget accordingly. It is important that an applicant have the discretion to determine how best to address its sustainability needs. For example, an applicant may design its project to include strategies that build its capacity to implement project activities more efficiently, which in turn would support sustainability after the grant.

The proposed selection factors related to sustainability are designed with the current economic climate in mind. As a few commenters noted, applicants should be actively planning on how those realities will affect their proposed projects. The intent of selection factors § 75.210(c)(2)(xxiv) and (xxv) is to encourage applicants to engage in this planning process and comprehensively plan how their projects could be implemented beyond the grant period if such projects were funded.

Finally, regarding the recommendation that we include a factor considering whether an applicant

effectively worked to build a market for educational services, we note that we have added a new selection criterion, § 75.210(i) (Strategy to Scale), which includes selection factor § 75.210(i)(2)(v), that considers whether an applicant demonstrates an unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application. This factor recognizes work that an applicant would do in advance of the project to build a market for educational services.

*Changes:* None.

*Comment:* Two commenters noted specifically the importance of productivity and efficiency, stating that selection factor § 75.210(c)(2)(xxvi) is especially appropriate given the current climate of limited resources and high expectations for success.

*Discussion:* We agree that productivity and efficiency have become increasingly important factors to consider in recent years. Allowing the Secretary to evaluate whether a proposed project is efficient and productive will ensure that Department funds are used as effectively and prudently as possible.

*Changes:* None.

*Comments:* Two commenters agreed with the addition of a new selection criterion, § 75.210(i) (Strategy to Scale), to consider an applicant's ability to successfully scale a project at the regional or national level. One commenter noted that the proposed addition would specifically benefit charter management organizations and support them in scaling successful strategies, and the other noted the importance of sharing best practices broadly.

Another commenter expressed support for the selection criterion in § 75.210(i) but requested that we allow for-profit entities, as well as nonprofit entities, to partner with grantees to bring their projects to scale during the grant period. The commenter stated that scaling has not historically been an area of expertise for entities providing educational services and that for-profit entities are well-suited to provide needed support.

*Discussion:* We agree that, in many Department programs, an applicant's ability to scale a proposed process, product, strategy, or program is very important. As the Department begins and continues to use this selection criterion, we expect potential applicants will devote resources and supports to focus on the processes, products, strategies, and programs that have greater potential to scale.

Should a grantee decide that it needs additional help in the area of scalability, that grantee is not obligated to seek assistance from only nonprofit entities. The proposed selection criterion, as written, does not explicitly refer to the types of entities with which a grantee may choose to work. We recognize that some for-profit entities may be particularly well-positioned to help grantees achieve scale, and encourage each grantee, to the extent it requires additional support, to seek out partners that are best suited to meet the needs of their projects.

*Changes:* None.

*Comments:* Many commenters noted that while the strategy to scale is an important criterion to consider for new projects, it is not applicable to programs that have already established successful practices at a national scale or to programs that are already widely available to students.

Conversely, some commenters expressed concern that the proposed selection criterion § 75.210(i) (Strategy to Scale) would not be feasible for small LEAs, rural LEAs, or community colleges. One commenter requested revising the language of the proposed criterion to ''Feasibility of Replication'' and placing it as a selection factor under § 75.210(h) (Quality of the Project Evaluation). This commenter also suggested that the subject of scaling a project is better suited to an IES grant. Another commenter noted that the selection criterion should instead be used only as a selection factor in specific circumstances because an applicant's capacity to scale is not a useful consideration for all Department programs. Another commenter added that some programs are, by definition, small and community based and that the use of this criterion would adversely affect such programs.

One commenter did not agree with the proposed selection criterion concerning an applicant's strategy to scale, noting that increasing focus on scaling projects to regional and national levels would decrease focus on student outcomes at the local level. The commenter also points out that many projects are effective because they are planned with a specific place in mind, and scaling such projects could prove ineffective.

*Discussion:* We recognize that the proposed selection criterion may not be applicable to Department programs that are already well established. We stress that Department program officials are in the best position to decide which selection criteria and factors fit the goals of their programs. When preparing notices inviting applications, the Department will continue to consider the strengths and needs of likely applicants, and will choose selection criteria that are appropriate to the program's purpose, goals, and applicant pool. Likewise, if the Department concludes that the nature of the program or types of applicants are not conducive to scaling, then the Department may decide not to include the selection criterion in the notice inviting applications for the program.

If the Department concludes the use of this criterion is consistent with the program's purpose and goals then applicants that better address the criterion will likely receive more points for the criterion than applicants that address it poorly. We recognize that some types of applicants may not typically design or implement projects that include activities to support effectively scaling a proposed process, product, strategy, or practice; however, any applicant responding to a notice inviting applications that includes this criterion may consider partnering with others to take the proposed process, product, strategy, or practice to scale.

We do not agree with the suggestion to change selection criterion § 75.210(i) (Strategy to Scale) into a selection factor under selection criterion § 75.210(h) (Quality of the Project Evaluation). The nuances needed to make the free-standing selection criterion useful and adaptable to a variety of Department programs would be lost if it were re-written as a selection factor under another criterion. It is important that a grantee experiencing success be able to share information about its project and support broad implementation of it to ensure that best practices are widely accessible and more easily replicated in the field. We think that by including § 75.210(i) (Strategy to Scale) as a selection criterion, as opposed to a selection factor within a selection criterion, we are able to provide clearer guidance to applicants on effective scaling methodology and feasible replication.

We disagree that including a selection criterion that considers an applicant's ability to effectively scale its proposed process, product, strategy, or practice would decrease focus on student outcomes at the local level. By choosing to consider one selection criterion, the Department does not diminish the influence of other selection criteria under consideration. For example, if Department program officials choose to consider § 75.210(c) (Quality of the Project Design) and § 75.210(i) (Strategy to Scale), a successful applicant would be expected to respond effectively to both criteria. That applicant would

therefore need to explain why its project design is effective in increasing student outcomes in its current setting and explain its capacity to scale. While § 75.210(i) (Strategy to Scale) primarily considers how well an applicant could implement its proposed process, product, strategy, or practice in a variety of settings and populations, it remains one piece among many to be considered as part of the competition process.

*Changes:* None.

**Maximum Funding Period—§ 75.250**

*Comments:* Many commenters expressed support for the change to this regulation because it will improve the quality of the data available to determine whether educational activities improve teaching and learning. However, one of these commenters stated that the option for funding for continued evaluation should be guaranteed. The commenter also suggested that grantees be allowed to use funds to hire qualified data management personnel and consultants to develop data architecture and data storage capacity.

*Discussion:* We appreciate the commenters' support for this regulation. However, we cannot guarantee continued data collection periods for all programs and grantees because this option is only possible in cases where there is authority for evaluation activities and sufficient funds have been appropriated for the program. Because these conditions may not be met for all programs or in all years, we cannot guarantee a continued data collection period for all programs and grantees.

With regard to the recommendation that the Department allow grantees to use grant funds to support personnel or contracts to assist with data collection, we note that, under the current regulations and cost principles, applicants may include such costs in their proposed budgets to contract for these services so long as they are necessary to the performance measurement and evaluation of the project.

*Changes:* None.

*Comment:* One commenter recommended clarifying whether the Secretary could approve a data collection period without providing additional funds. The commenter explained that in some cases grantees may need both additional time and funds in order to complete performance measurement activities but that there are also instances when a grantee may need only additional time.

*Discussion:* Under § 75.261, a grantee may request a no-cost extension of its project period to complete approved project activities. Thus, the regulations already allow grantees to request additional time to complete performance measure and other project activities without additional funding, so long as the appropriation accounts remain available. Funds obligated on a fiscal year basis remain available in grant accounts for five fiscal years after the expiration of the fiscal year for which the funds were obligated by the Federal government. 31 U.S.C. 1552(a). Thus, both obligated and unobligated grant funds generally remain available to grantees during no cost extensions to fund continued collection of data after the end of a project period.

The amended regulations in § 75.250 allow the Secretary to approve a data collection period with or without additional funds. Prior to the approval of a data collection period, we would assess with the grantee the appropriate duration of the data collection period and whether additional funds are necessary to complete the data collection, reporting, and analysis that would occur during that period.

*Changes:* None.

*Comment:* One commenter stated that data collection is not the only valid reason for extending a grant period and suggested revising the regulations to allow extensions on the basis of effectiveness and to aid in a project's transition to a new funding stream.

*Discussion:* These amendments apply to discretionary grant programs that award funds on the basis of a competitive process. As such, it would not be appropriate for the Department to award additional funds to a grantee to conduct a new project or transition to a new funding stream outside of the competitive process.

*Changes:* None.

**Continuation of a Multi-Year Project After the First Budget Period—§ 75.253**

*Comments:* Three commenters expressed support for the change in this regulation. One commenter stated that the change would improve the use of performance measurement and evaluation. However, one of these commenters requested additional information on the meaning of ''substantial progress.'' Another commenter urged establishing program-specific evaluation requirements that balance the need for valid evidence of effectiveness with the need to limit burden on grantees.

*Discussion:* We appreciate the commenters' support for the amended regulation. Given the variety of programs to which these regulations apply, a more detailed definition of ''substantial progress'' would not be practical or helpful. The Department will establish program-specific evaluation requirements in the notice inviting applications and will consider the program's purpose, goals, and applicant pool when deciding the evaluation requirements to use in a given year's competition. As part of this process, the Department must consider the burden of the information collection associated with the application and program requirements and receive approval under the Paperwork Reduction Act of 1995 from OMB to collect that information. Because current law requires programs to consider the burden associated with information collection, we do not think it is necessary to make the change requested by the commenter.

*Changes:* None.

**Other Comments Not Directly Related to the Proposed Rule**

*Comment:* One commenter stated that the amendments were unclear and would produce nothing of value for students in this country.

*Discussion:* Although we recognize these amendments may not directly affect students, we disagree with the assessment that they would not produce anything of value. These amendments are designed to support the successful implementation of projects funded by the Department and improve their performance measures, which will in turn benefit students served by the projects. The proposed amendments also allow the Department to be more effective and efficient when selecting discretionary grantees, to provide higher-quality data to the Congress and the public about the effectiveness of Department programs, and to reduce administrative burden on applicants and grantees.

*Changes:* None.

*Comment:* One commenter expressed concern that students with disabilities are underserved.

*Discussion:* We appreciate the commenter's concern and note that section 504 of the Rehabilitation Act of 1973 and the Department's section 504 implementing regulations prohibit discrimination on the basis of disability for entities receiving financial assistance from the Department. In addition, the Department enforces Title II of the Americans with Disabilities Act (ADA), as well as the regulations implementing Title II of the ADA, which prohibit discrimination on the basis of disability by public entities. Finally, section 427 of the General Education Provisions Act (GEPA) addresses equitable access by requiring all applicants to provide a statement that identifies access barriers

to participation, which can include barriers to participation by individuals with disabilities, in their projects and identifies solutions to overcome those barriers.

Moreover, the Department's Office of Special Education and Rehabilitative Services (OSERS) is committed to improving results and outcomes for people with disabilities of all ages. OSERS provides a wide array of supports to parents and individuals, school districts, and states in three main areas: Special education, vocational rehabilitation, and research. Within OSERS, the Office of Special Education Programs (OSEP) supports a comprehensive array of programs and projects authorized by the Individuals with Disabilities Education Act (IDEA) that improve results for infants, toddlers, children, and youth with disabilities.

*Changes:* None.

*Comment:* One commenter recommended adding language to §§ 76.722 and 80.40 to clarify that, although a grantee may require subrecipients to submit reports in a manner and format that enable the grantee to comply with Department requirements, an SEA must not do so in a manner that would place financial or programmatic burden on the subrecipient or require a subrecipient to provide data that is readily available to the SEA by other means. The commenter noted that monitoring subrecipients is vital to the successful implementation of a grant, but a grantee should not use it to usurp autonomy of subrecipients or to require the use of specific financial software that could be costly or burdensome to small entities.

*Discussion:* In the preamble of the NPRM, we discussed on page 74392 the Department's retrospective analysis of existing regulations and requested comment on other regulations within EDGAR that may be in need of modification. We appreciate this commenter's concerns regarding §§ 76.722 and 80.40 and will use the feedback to further inform and plan our retrospective review efforts.

*Changes:* None.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

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

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

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

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

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

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

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

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

*Paperwork Reduction Act of 1995*

These regulations do not contain any information collection requirements.

*Intergovernmental Review*

These regulations subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these regulations.

*Assessment of Educational Impact*

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. You may also view this document in text [or PDF] at the following site:

**List of Subjects**

*34 CFR Part 75*

Accounting, Copyright, Education, Grant programs—education.

*34 CFR Part 77*

Education, Grant programs—education.

Dated: August 6, 2013.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends parts 75 and 77 of title 34 of the Code of Federal Regulations as follows:

## PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 2. Add a new § 75.110 to read as follows:

### § 75.110 Information regarding performance measurement.

(a) The Secretary may establish in an application notice for a competition one or more performance measurement requirements, including requirements for performance measures, baseline data, or performance targets, and a requirement that applicants propose in their applications one or more of their own performance measures, baseline data, or performance targets.

(b) If an application notice requires applicants to propose project-specific performance measures, baseline data, or performance targets, the application must include the following, as required by the application notice:

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or

(ii) If the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(c) If the application notice establishes performance measurement requirements, the applicant must also describe in the application—

(1)(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and

(ii) If the Secretary requires applicants to collect data after the substantive work of a project is complete regarding the attainment of certain performance targets, the data collection and reporting methods the applicant would use during the post-performance period and why those methods are likely to yield reliable, valid, and meaningful performance data.

(2) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 3. Add a new undesignated center heading ''Competition Exceptions'' in subpart C immediately before the undesignated center heading ''State Comment Procedures''.

■ 4. Add a new § 75.135 to subpart C under the undesignated center heading ''Competition Exceptions'' to read as follows:

### § 75.135 Competition exception for proposed implementation sites, implementation partners, or service providers.

(a) When entering into a contract with implementation sites or partners, an applicant is not required to comply with the competition requirements in 34 CFR 74.43 or 80.36(c), as applicable, if—

(1) The contract is with an entity that agrees to provide a site or sites where the applicant would conduct the project activities under the grant;

(2) The implementation sites or partner entities that the applicant proposes to use are identified in the application for the grant; and

(3) The implementation sites or partner entities are included in the application in order to meet a regulatory, statutory, or priority requirement related to the competition.

(b) When entering into a contract for data collection, data analysis, evaluation services, or essential services, an applicant may select a provider using the informal, small-purchase procurement procedures in 34 CFR 80.36(d)(1), regardless of whether that applicant would otherwise be subject to that part or whether the evaluation contract would meet the standards for a small purchase order, if—

(1) The contract is with the data collection, data analysis, evaluation service, or essential service provider;

(2) The data collection, data analysis, evaluation service, or essential service provider that the applicant proposes to use is identified in the application for the grant; and

(3) The data collection, data analysis, evaluation service, or essential service provider is identified in the application in order to meet a statutory, regulatory, or priority requirement related to the competition.

(c) If the grantee relied on the exceptions under paragraph (a) or (b) of this section, the grantee must certify in its application that any employee, officer, or agent participating in the selection, award, or administration of a contract is free of any real or apparent conflict of interest and, if the grantee relied on the exceptions of paragraph (b) of this section, that the grantee used small purchase procedures to obtain the product or service.

(d) A grantee must obtain the Secretary's prior approval for any change to an implementation site, implementation partner, or data collection, data analysis, evaluation service, or essential service provider, if the grantee relied on the exceptions

under paragraph (a) or (b) of this section to select the entity.

(e) The exceptions in paragraphs (a) and (b) of this section do not extend to the other procurement requirements in 34 CFR part 74 and 34 CFR part 80 regarding contracting by grantees and subgrantees.

(f) For the purposes of this section, *essential service* means a product or service directly related to the grant that would, if not provided, have a detrimental effect on the grant.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 5. Revise § 75.209 to read as follows:

**§ 75.209 Selection criteria based on statutory or regulatory provisions.**

The Secretary may establish selection criteria and factors based on statutory or regulatory provisions that apply to the authorized program, which may include, but are not limited to criteria and factors that reflect—

(a) Criteria contained in the program statute or regulations;

(b) Criteria in § 75.210;

(c) Allowable activities specified in the program statute or regulations;

(d) Application content requirements specified in the program statute or regulations;

(e) Program purposes, as described in the program statute or regulations; or

(f) Other pre-award and post-award conditions specified in the program statute or regulations.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 6. Amend § 75.210 by:

■ A. Revising the introductory text.

■ B. Revising paragraph (c)(2)(xvi).

■ C. Adding paragraphs (c)(2)(xxiv) through (xxix).

■ D. Adding paragraphs (h)(2)(viii) through (xii).

■ E. Adding a new paragraph (i).

The revisions and additions read as follows.

**§ 75.210 General selection criteria.**

In determining the selection criteria to evaluate applications submitted in a grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. The Secretary may define a selection criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion to another criterion.

* * * * *

(c) * * *

(2) * * *

(xvi) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in 34 CFR 77.1(c)), using existing funding streams from other programs or policies supported by community, State, and Federal resources.

* * * * *

(xxiv) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (e.g., State educational agencies, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence.

(xxv) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the grant.

(xxvi) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(xxvii) The extent to which the proposed project will integrate with or build on similar or related efforts in order to improve relevant outcomes (as defined in 34 CFR 77.1(c)), using nonpublic funds or resources.

(xxviii) The extent to which the proposed project is supported by evidence of promise (as defined in 34 CFR 77.1(c)).

(xxix) The extent to which the proposed project is supported by strong theory (as defined in 34 CFR 77.1(c)).

* * * * *

(h) * * *

(2) * * *

(viii) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards without reservations.[1]

(ix) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse Evidence Standards with reservations.[2]

(x) The extent to which the methods of evaluation will, if well-implemented, produce evidence of promise (as defined in 34 CFR 77.1(c)).

(xi) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(xii) The extent to which the evaluation plan clearly articulates the key components, mediators, and outcomes of the grant-supported intervention, as well as a measurable threshold for acceptable implementation.

(i) *Strategy to scale.* (1) The Secretary considers the applicant's strategy to scale the proposed project.

(2) In determining the applicant's capacity to scale the proposed project, the Secretary considers one or more of the following factors:

(i) The applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national or regional level (as defined in 34 CFR 77.1(c)) working directly, or through partners, during the grant period.

(ii) The applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to further develop and bring to scale the proposed process, product, strategy, or practice, or to work with others to ensure that the proposed process, product, strategy, or practice can be further developed and brought to scale, based on the findings of the proposed project.

(iii) The feasibility of successful replication of the proposed project, if favorable results are obtained, in a variety of settings and with a variety of populations.

(iv) The mechanisms the applicant will use to broadly disseminate information on its project so as to support further development or replication.

(v) The extent to which the applicant demonstrates there is unmet demand for the process, product, strategy, or practice that will enable the applicant to reach the level of scale that is proposed in the application.

(vi) The extent to which the applicant identifies a specific strategy or strategies that address a particular barrier or barriers that prevented the applicant, in the past, from reaching the level of scale that is proposed in the application.

■ 7. Revise § 75.250 to read as follows:

**§ 75.250 Maximum funding period.**

(a) The Secretary may approve a project period of up to 60 months to perform the substantive work of a grant.

(b) The Secretary may approve a data collection period for a grant for a period of up to 72 months after the end of the project period and provide funding for

[1] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[2] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

the data collection period for the sole purpose of collecting, analyzing, and reporting performance measurement data regarding the project. The Secretary may inform applicants of the Secretary's intent to approve data collection periods in the application notice published for a competition or may decide to fund data collection periods after grantees have started their project periods.

(Authority: 20 U.S.C. 1221e–3 and 3474.)

■ 8. Amend § 75.251 by revising the section heading and adding a new paragraph (c) to read as follows:

**§ 75.251 Budget periods.**

* * * * *

(c) If the Secretary funds a multi-year data collection period, the Secretary may fund the data collection period through separate budget periods and fund those budget periods in the same manner as those periods are funded during the project period.

■ 9. Amend § 75.253 by—
■ A. Revising paragraph (a)(2).
■ B. Adding a new paragraph (a)(5).
■ C. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f).
■ D. Adding a new paragraph (b).
■ E. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

**§ 75.253 Continuation of a multi-year project after the first budget period.**

(a) * * *

(2) The grantee has either—

(i) Made substantial progress in achieving—

(A) The goals and objectives of the project; and

(B) If the Secretary established performance measurement requirements for the grant in the application notice, the performance targets in the grantee's approved application; or

(ii) Obtained the Secretary's approval for changes to the project that—

(A) Do not increase the amount of funds obligated to the project by the Secretary; and

(B) Enable the grantee to achieve the goals and objectives of the project and meet the performance targets of the project, if any, without changing the scope or objectives of the project.

* * * * *

(5) The grantee has maintained financial and administrative management systems that meet the requirements in 34 CFR 74.21 or 80.20, as appropriate.

(b) In deciding whether a grantee has made substantial progress, the Secretary may consider any information relevant to the authorizing statute, a criterion, a priority, or a performance measure, or to a financial or other requirement that applies to the selection of applications for new grants.

* * * * *

(f) Unless prohibited by the program statute or regulations, a grantee that is in the final budget period of its project period may seek continued assistance for the project as required under the procedures for selecting new projects for grants.

* * * * *

■ 10. Add § 75.266 to subpart D to read as follows:

**§ 75.266 What procedures does the Secretary use if the Secretary decides to give special consideration to applications supported by strong or moderate evidence of effectiveness?**

(a) As used in this section, ''strong evidence of effectiveness'' is defined in 34 CFR 77.1(c);

(b) As used in this section, ''moderate evidence of effectiveness'' is defined in 34 CFR 77.1(c); and

(c) If the Secretary determines that special consideration of applications supported by strong or moderate evidence of effectiveness is appropriate, the Secretary may establish a separate competition under the procedures in 34 CFR 75.105(c)(3), or provide competitive preference under the procedures in 34 CFR 75.105(c)(2), for applications supported by:

(1) Evidence of effectiveness that meets the conditions set out in paragraph (a) of the definition of ''strong evidence of effectiveness'' in 34 CFR 77.1;

(2) Evidence of effectiveness that meets the conditions set out in either paragraph (a) or (b) of the definition of ''strong evidence of effectiveness'' in 34 CFR 77.1; or

(3) Evidence of effectiveness that meets the conditions set out in the definition of ''moderate evidence of effectiveness.''

(Authority: 20 U.S.C. 1221e–3 and 3474.)

■ 11. Revise § 75.590 to read as follows:

**§ 75.590 Evaluation by the grantee.**

(a) If the application notice for a competition required applicants to describe how they would evaluate their projects, each grantee under that competition must demonstrate to the Department that—

(1) The evaluation meets the standards of the evaluation in the approved application for the project; and

(2) The performance measurement data collected by the grantee and used in the evaluation meet the performance measurement requirements of the approved application.

(b) If the application notice for a competition did not require applicants to describe how they would evaluate their projects, each grantee must provide information in its performance report demonstrating—

(1) The progress made by the grantee in the most recent budget period, including progress based on the performance measurement requirements for the grant, if any;

(2) The effectiveness of the grant, including fulfilling the performance measurement requirements of the approved application, if any; and

(3) The effect of the project on the participants served by the project, if any.

(Authority: 20 U.S.C. 1221e–3 and 3474.)

■ 12. Amend § 75.708 by:
■ A. Revising the section heading.
■ B. Revising paragraph (a).
■ C. Redesignating paragraph (b) as paragraph (e).
■ D. Adding new paragraphs (b), (c) and (d).

The revision and additions read as follows.

**§ 75.708 Subgrants.**

(a) A grantee may not make a subgrant under a program covered by this part unless authorized by statute or by paragraph (b) of this section.

(b) The Secretary may, through an announcement in the **Federal Register,** authorize subgrants when necessary to meet the purposes of a program. In this announcement, the Secretary will—

(1) Designate the types of entities, e.g., State educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations, to which subgrants can be awarded; and

(2) Indicate whether subgrants can be made to entities identified in an approved application or, without regard to whether the entity is identified in an approved application, have to be selected through a competitive process set out in subgranting procedures established by the grantee.

(c) If authorized under paragraph (b) of this section, a subgrant is allowed if it will be used by that entity to directly carry out project activities described in that application.

(d) The grantee, in awarding subgrants under paragraph (b) of this section, must—

(1) Ensure that subgrants are awarded on the basis of an approved budget that is consistent with the grantee's approved application and all applicable Federal statutory, regulatory, and other requirements;

(2) Ensure that every subgrant includes any conditions required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation, including the Federal anti-discrimination laws enforced by the Department.

* * * * *

## PART 77— DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

■ 13. The authority citation for part 77 is revised to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 14. Amend § 77.1(c) by adding the following definitions in alphabetical order:

### § 77.1 Definitions that apply to all Department programs.

* * * * *

(c) * * *

*Ambitious* means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure.

* * * * *

*Baseline* means the starting point from which performance is measured and targets are set.

* * * * *

*Evidence of promise* means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in paragraphs (a) and (b) of this section are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental study that meets the What Works Clearinghouse Evidence Standards with reservations; [1] or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.[2]

(ii) The study referenced in paragraph (a) found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger), favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

* * * * *

*Large sample* means an analytic sample of 350 or more students (or other single analysis units) who were randomly assigned to a treatment or control group or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units) and that were randomly assigned to a treatment or control group.

* * * * *

*Logic model* (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

* * * * *

*Moderate evidence of effectiveness* means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations,[3] found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations,[4] found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (**NOTE:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

* * * * *

*Multi-site sample* means more than one site, where site can be defined as an LEA, locality, or State.

* * * * *

*National level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender).

* * * * *

*Performance measure* means any quantitative indicator, statistic, or metric used to gauge program or project performance.

*Performance target* means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

* * * * *

*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations [5] (they cannot meet What Works Clearinghouse Evidence Standards without reservations).

*Randomized controlled trial* means a study that employs random assignment of, for example, students, teachers,

[1] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[2] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[3] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[4] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[5] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards without reservations.[6]

*Regional level* describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as with different groups (e.g., economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). For an LEA-based project, to be considered a regional-level project, a process, product, strategy, or practice must serve students in more than one LEA, unless the process, product, strategy, or practice is implemented in a State in which the State educational agency is the sole educational agency for all schools.

*Relevant outcome* means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program.

* * * * *

*Strong evidence of effectiveness* means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations,[7] found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (Note: multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

(ii) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which: Meets the What Works Clearinghouse Evidence Standards with reservations,[8] found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

*Strong theory* means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

[FR Doc. 2013–19390 Filed 8–12–13; 8:45 am]

**BILLING CODE 4000–01–P**

[6] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[7] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

[8] What Works Clearinghouse Procedures and Standards Handbook (Version 2.1, September 2011), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.*

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**H.R. 267/P.L. 113–23**

Hydropower Regulatory Efficiency Act of 2013 (Aug. 9, 2013; 127 Stat. 493)

**H.R. 678/P.L. 113–24**

Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act (Aug. 9, 2013; 127 Stat. 498)

**H.R. 1092/P.L. 113–25**

To designate the air route traffic control center located in Nashua, New Hampshire, as the ''Patricia Clark Boston Air Route Traffic Control Center''. (Aug. 9, 2013; 127 Stat. 501)

**H.R. 1171/P.L. 113–26**

Formerly Owned Resources for Veterans to Express Thanks for Service Act of 2013 (Aug. 9, 2013; 127 Stat. 502)

**H.R. 1344/P.L. 113–27**

Helping Heroes Fly Act (Aug. 9, 2013; 127 Stat. 503)

**H.R. 1911/P.L. 113–28**

Bipartisan Student Loan Certainty Act of 2013 (Aug. 9, 2013; 127 Stat. 506)

**H.R. 2167/P.L. 113–29**

Reverse Mortgage Stabilization Act of 2013 (Aug. 9, 2013; 127 Stat. 509)

**H.R. 2576/P.L. 113–30**

To amend title 49, United States Code, to modify requirements relating to the availability of pipeline safety regulatory documents, and for other purposes. (Aug. 9, 2013; 127 Stat. 510)

**H.R. 2611/P.L. 113–31**

To designate the headquarters building of the Coast Guard on the campus located at 2701 Martin Luther King, Jr., Avenue Southeast in the District of Columbia as the ''Douglas A. Munro Coast Guard Headquarters Building'', and for other purposes. (Aug. 9, 2013; 127 Stat. 511)

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