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WHEN: Tuesday, October 22, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 1 and 2

**[Docket No. APHIS–2011–0003]**

**RIN 0579–AD57**

## Animal Welfare; Retail Pet Stores and Licensing Exemptions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are revising the definition of *retail pet store* and related regulations in order to ensure that the definition of *retail pet store* in the regulations is consistent with the Animal Welfare Act (AWA), thereby bringing more pet animals sold at retail under the protection of the AWA. Specifically, we are narrowing the definition of *retail pet store* to mean a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only certain animals are sold or offered for sale, at retail, for use as pets. Retail pet stores are not required to be licensed and inspected under the AWA. In addition, we are removing the limitation on the source of gross income from the licensing exemption in the regulations for any person who does not sell or negotiate the sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of the animals other than wild or exotic animals, dogs, or cats during any calendar year. We are also increasing from three to four the number of breeding female dogs, cats, and/or small exotic or wild mammals that a person may maintain on his or her premises and be exempt from the licensing and inspection requirements if he or she sells only the offspring of those animals born and raised on his or her premises, for pets or exhibition. This exemption applies regardless of whether those animals are sold at retail or wholesale. These actions are necessary so that all animals sold at retail for use as pets are monitored for their health and humane treatment.

**DATES:** *Effective Date:* November 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gerald Rushin, Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1236; (301) 851–3751.

**SUPPLEMENTARY INFORMATION:**

### I. Purpose of the Regulatory Action

*Need for the Regulatory Action*

The Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), seeks to ensure the humane handling, care, treatment, and transportation of certain animals that are sold at wholesale and retail for use in research facilities, for exhibition purposes, or for use as pets by means of Federal licensing and inspection. When Congress passed the AWA in 1966, it specifically exempted retail pet stores from such licensing and inspection. At that time, retailers of pets covered under the exemption consisted mostly of traditional ''brick-and-mortar'' pet stores, as well as small-scale breeders whose place of business was typically their residence. Both types of retail outlets were exempted by the AWA as ''retail pet stores'' because, despite the many dissimilarities in how pet shops and small-scale residential breeders conduct business, they share in common a business model in which buyers visit their places of business and personally observe the animals available for sale prior to purchasing and/or taking custody of them.

Enforcement of the Act has been delegated by the Secretary of Agriculture to the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA). APHIS has issued regulations pursuant to the Act; these regulations, which we refer to below as the AWA regulations, are found in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties; and part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA.

Part 2 requires most dealers to be licensed by APHIS; classes of individuals who are exempt from such licensing are listed in paragraph (a)(3) of § 2.1.

Since the AWA regulations were issued, most retailers of pet animals have been exempt from licensing by virtue of our considering them to be ''retail pet stores'' as defined in § 1.1 of the AWA regulations.

Because the previous definition of *retail pet store* in the AWA regulations covered nearly all retail outlets, retailers selling animals by any means, including sight unseen sales conducted over the Internet or by mail, telephone, or any other method where customers do not personally observe the animals available for sale prior to purchasing and/or taking custody of them, were considered to be retail pet stores and as such had been exempt from licensing and inspection under § 2.1(a)(3)(i) and § 2.1(a)(3)(vii).[1]

With the growth of the Internet in the 1990s, technology brought with it new and unforeseen opportunities to buy and sell pets. More retailers began offering pets for sale sight unseen and to sell and ship them nationwide. While pet animals were sometimes sold sight unseen via telephone and mail order decades before passage of the AWA, the Internet has made it possible for many more persons throughout the United States to buy pets online from retailers without ever having to be physically present at the seller's place of business or residence and personally observe the animals offered for sale as the AWA intended. With the dramatic rise in sight unseen sales have come increasing complaints from the public about the lack of monitoring and oversight of the health and humane treatment of those animals.

In order to ensure that the definition of *retail pet store* in the AWA regulations is consistent with the AWA and that all animals sold at retail for use

[1] Both the retail pet store exemption in § 2.1(a)(3)(i) and the direct retail sales exemption in § 2.1(a)(3)(vii) derive their authority from the AWA exemption for retail pet stores. We discuss this at greater length later in this document.

as pets are monitored for their health and humane treatment, we published in the **Federal Register** (77 FR 28799–28805, Docket No. APHIS–2011–0003), on May 16, 2012, a proposal [2] to revise the definition of *retail pet store* and related regulations to bring more pet animals sold at retail under the protection of the AWA. This rule finalizes that proposed rule while also making changes to its provisions based on the comments we received (see the section below titled ''Summary of the Major Provisions of the Regulatory Action'').

*Legal Authority for the Regulatory Action*

Under the AWA, the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. As we mentioned previously in this document, the Secretary has delegated responsibility for administering the AWA to the Administrator of APHIS. Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care.

**II. Summary of the Major Provisions of the Regulatory Action**

*Key Changes to the Proposed Rule*

Based on the comments we received and our own reevaluation of the proposed rule, we are finalizing the proposed rule with the following key changes to its provisions:

- Revising our proposed definition of *retail pet store* so that it means a place of business or residence (not necessarily that of the seller's) at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal available for sale prior to purchasing and/or taking custody of that animal after purchase and where only certain animals are sold or offered for sale, at retail, for use as pets.
- Amending the exemption from licensing for persons maintaining four or fewer breeding females in § 2.1(a)(3)(iii) to apply only to wholesalers (for whom the exemption was originally intended).
- Restoring and amending the exemption in § 2.1(a)(3)(vii) so that any person including, but not limited to, purebred dog or cat fanciers, who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, and who sells, at retail, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license, is also considered a retail pet store for regulatory purposes.
- Explaining in detail the effects of the proposed provisions on cat and rabbit breeders.

**III. Costs and Benefits**

The benefits of this rule justify its costs. More pet animals sold at retail will be brought under the protection of the AWA and monitored for their health and humane treatment. Improved animal welfare will benefit buyers of pets and the general public in various ways. Monitoring the health and humane treatment of pet animals should reduce the number of pets receiving inadequate care and reduces the possibility of sick or injured pet animals being purchased sight unseen. When a buyer receives a sick or abused pet animal, sight unseen, the responsibility for correcting inadequate care has been effectively transferred from the seller to the buyer without the buyer's knowledge or consent. If that buyer is unable or unwilling to provide the pet animal with needed care, a shelter may become the default caregiver for that animal. A reduction in the number of sick or abused pet animals received by buyers may reduce the number of such animals sent to shelters. Public shelters provide for the care of these unwanted pet animals, usually at local taxpayer expense. Also, as noted by several commenters, neglected or abused pet animals confiscated from substandard breeding operations are often sent to shelters to provide for their care. Newly regulated commercial breeders working to comply with AWA regulations will increase the health and well-being of the pet animals under their care.

In addition, when breeding operations for which regulatory oversight is insufficient fail to adequately provide veterinary care for their animals, the buyer may subsequently incur greater costs associated with providing that care because needed care has been delayed. The rule will benefit buyers of animals by providing regulatory oversight to ensure that breeders provide necessary veterinary care.

Animals can carry zoonotic diseases (diseases that can be transmitted between, or are shared by animals and humans). The possibility of an animal carrying a zoonotic disease is reduced with adequate veterinary care, including vaccinations. To the extent that improved oversight reduces the likelihood of pet-to-human transmission of zoonotic diseases such as rabies, the public as a whole will benefit from the rule. The rule will also address the competitive disadvantage of retail breeders who incur certain costs by adhering to AWA standards while retail breeders who do not operate their facilities according to AWA standards may bear lower costs.

There is a great deal of uncertainty surrounding the number of facilities that will be affected by this rule, as we acknowledged in the proposed rule, and as evidenced in the public comments. There are hundreds of distinct dog breeds, and correspondingly large numbers of dog breeders in the United States. Breeders with an online presence are those most likely to be selling the offspring sight unseen and thus are more likely to be affected by this rule. We estimate that there could be between 8,400 and 15,000 such breeders in the United States. This estimate is based on the assumption that for every five breeders identified by APHIS in online breeder registries there is one other breeder that has not been identified who also uses remote marketing methods.

However, this rule will only affect those dog breeders who sell dogs as pets, not for hunting, security, breeding, or other purposes; who maintain more than four breeding females on their property; and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of that animal after purchase. When these conditions are taken into account, we estimate that there are between 2,600 and 4,640 dog breeders that may be affected by this rule.

The rule will also affect cat breeders who maintain more than four breeding females at their facilities and sell the offspring as pets, sight unseen. Fewer than 2 percent of cats in the United States are purebred and raised by breeders. We estimate that about 325 cat breeders may be affected by this rule.

The rule will also affect rabbit breeders who sell the offspring as pets, sight unseen, which is not a common practice because rabbits are usually sold face-to-face at auctions, exhibits, and fairs where buyers are physically present. We estimate that no more than 75 rabbitries may be affected by this rule.

Newly regulated breeders will be subject to licensing, animal identification and recordkeeping requirements. In addition, affected entities will be subject to standards for

[2] To view the proposed rule, its supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0003.*

facilities and operations, animal health and husbandry, and transportation. One set of costs attributable to the rule will be incurred annually by all newly regulated entities, such as licensing fees. Other costs will depend on the manner and extent to which entities are not complying with the basic standards of the AWA. Some of these costs will be one-time costs in the first year, such as providing adequate shelter; others will recur yearly, such as providing adequate veterinary care.

The cost of a license for breeders is based on 50 percent of gross sales during the preceding business year. As an example, if 50 percent of gross sales are more than $500 but not more than $2,000, the annual cost of a license is $70. Identification tags for dogs and cats cost from $1.12 to $2.50 each. Other animals such as rabbits can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure. We estimate that the average licensed breeder requires about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. All newly licensed breeders will incur these costs. We estimate these costs would be between about $284 and $550 for a typical dog breeder. Costs at the 3,000 to 5,000 newly licensed dog, cat, and rabbit breeders for animal licensing, animal identification and recordkeeping could range between $853,000 and $2.8 million annually.

The newly regulated breeders will also need to meet regulatory standards concerning facilities and operations, animal health and husbandry, and transportation. However, as acknowledged by a wide spectrum of commenters on the proposed rule, most breeders maintain their facilities well above the minimum standards of the AWA. Therefore, the vast majority of newly regulated breeders will only need to incur licensing, animal identification, and recordkeeping costs and not need to make structural and/or operational changes in order to comply with the standards. Neither the number of entities that will need to make changes nor the extent of those changes is known. Therefore, the overall cost of structural and operational changes that will be incurred due to this rule is also unknown. However, we can estimate the general magnitude of these costs by assuming the newly regulated entities exhibit patterns of noncompliance similar to those of currently regulated wholesale breeders. We agree with many comments we received that most breeders that may be affected by this rule are already substantially in compliance.

Based on our experience regulating wholesale breeders, the most common areas of regulatory noncompliance at prelicensing and compliance inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. We apply percentages of noncompliance for these areas, multiplied by likely unit costs or cost ranges, to the estimated number of affected breeders described above to arrive at a total cost range for the rule. We estimate that costs for coming into compliance for currently noncompliant breeders could range from $2.9 million to $12.1 million in the first year, when both one-time structural changes will occur and annual operational changes will start.

The rule will also affect some currently licensed wholesale breeders. Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could reduce the number of these licensees. We expect that the number of current licensees that will fall below the exemption threshold following the implementation of this rule will be very small.

The majority of businesses affected are likely to be small entities. As explained, this wide range in total cost is mainly derived from the uncertainty surrounding the total number of breeders that will need to become licensed as a result of this rule and the number that will then need to make structural or operational changes. It derives to a lesser degree from the ranges in costs that are assumed will be incurred by the newly licensed facilities to remedy instances of noncompliance.

## IV. Discussion of Comments

We solicited comments on the proposed rule for 60 days ending July 16, 2012. On July 16, 2012, we published in the **Federal Register** (77 FR 41716, Docket No. APHIS–2011–0003) a document [3] announcing a 30-day extension of the comment period to give the public more time to submit comments. We also announced in that document the availability of a factsheet [4] regarding the provisions of the proposed rule.

We received 75,584 individual comments, 134,420 signed form letters, and 213,000 signatures on petitions submitted by organizations supporting or opposing the proposed rule. The comments were from animal welfare organizations, kennel clubs, breed registries, organizations representing owners and trainers of working dogs, not-for-profit animal rescue and sheltering organizations, animal transporters, purebred dog and cat fanciers, residential breeders of dogs, cats, rabbits, rats, and other animals, USDA-licensed breeders, pet and pet supply stores, pet owners, farmers, veterinarians and veterinary organizations, horse and livestock owners and producers, raptor propagators, State governments, elected officials, including U.S. Senators and Representatives, and members of the public. The issues raised by the commenters are discussed below by topic. We address the issues in the order that they pertain to the regulatory text of the proposed rule, then address comments pertaining to oversight and enforcement, constitutionality and legality, and other topics.

*Dealer Definition*

We proposed to amend the definition of *dealer* in § 1.1 of the AWA regulations to mean: ''Any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet, or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of the animals other than wild or exotic animals, dogs, or cats during any calendar year.'' This proposed amendment to the definition of *dealer* was necessary in order to eliminate inconsistencies between that definition and our proposed definition of *retail pet store.*

In the paragraphs that follow, we use discrete portions of the proposed definition as section headings to organize our discussion of the comments we received on various aspects of the proposed definition. Later in this document we take the same approach in our discussion of the

[3] To view this document, go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0003-8841.*

[4] To view the factsheet, go to *http://www.aphis.usda.gov/publications/animal_welfare/2012/retail_pets_faq.pdf.*

comments received on the proposed definition of *retail pet store* and the proposed revisions to the exemptions from licensing contained in the AWA regulations.

*Dealer:* ''Any person who, in *commerce,* for *compensation* or *profit* . . .''

A number of commenters stated that APHIS had failed to define the terms ''commerce'' and ''compensation'' as the terms are used in the definition of *dealer.* Specifically, they noted that private animal rescues and shelters that suggest a self-determined donation are not operating in commerce or attempting to obtain compensation or profit and thus do not fall under the definition of *dealer* (see also the section below titled ''Requests for Additional Exemptions''). Likewise, many commenters stated that the business model of rescue and shelter organizations is clearly different from that of dealers in that it involves neither compensation nor profit, and for that reason all rescues and shelters should be exempt from licensing. Several commenters stated that it is illegal for 501(c)(3)s to require compensation or to attempt to profit from any services that they provide; one of these commenters expressed concern that, if requests for donations by private animal rescues or shelters are considered to be commerce or compensation, those organizations would be forced to pay Federal, State, and/or local taxes on every sale of a rescued or abandoned animal.

On the other hand, some commenters noted that animal shelter and rescue organizations that transport and offer for adoption rescued dogs and cats employ a business model that does not significantly differ from those of many dealers. The commenters also noted that rescues often request substantial adoption fees for their services and that those fees constitute compensation. Many of these commenters concluded that such organizations should therefore be regulated as dealers.

We consider private rescues and shelters that perform any of the activities listed in the definition of *dealer,* including transporting or offering animals for compensation, to be dealers. We consider acts of compensation to include any remuneration for the animal, regardless of whether it is for profit or not for profit. Remuneration thus includes, but is not limited to, sales, adoption fees, and donations.

We note, however, that dealers are only required to be licensed if they do not meet any of the exemptions in the regulations. Many private rescues and shelters operate under a business model in which representatives for the rescue or shelter and the animals available for sale or adoption are physically present at a location where the public is encouraged to personally observe the animals; this business model is consistent with our definition of *retail pet store.* As a result, private rescues and shelters with this business model have historically been exempted under the retail pet store exemption in § 2.1(a)(3)(i) and will continue to be exempted.

Finally, we consider such rescues and shelters to be retail pet stores only for the purposes of our regulations. Whether any other Agency or jurisdiction defines such an organization as a retail pet store for taxation or any other purpose is beyond our purview.

One commenter asked whether the proposed rule establishes a new class of licensee to be categorized in the same manner as existing dealers, and if so, it is unclear how APHIS could treat the new dealers differently from those existing licensees.

We are not establishing a new class of licensee. All newly licensed dealers would be subject to the same requirements as dealers who are currently licensed.

*Dealer:* ''Including *unborn animals,* organs, limbs, blood, serum, or *other parts.* . . .''

One commenter stated that she frequently purchases semen in order to impregnate female dogs that cannot travel to stud because of distance or risk to health. The commenter added that she does not sell the female dogs or their offspring and for that reason should not be considered a dealer.

Unless an individual buys or sells, at retail, or transports semen or unborn animals for one of the six purposes listed in the definition of *dealer* (research, teaching, testing, experimentation, exhibition, or use as a pet), the individual is not a dealer. The activities described by the commenter do not fall under any of the listed purposes.

The same commenter asked whether individuals involved in transporting a female dog back from a stud after breeding would be considered dealers, since the female dog is presumed to be carrying an unborn animal within it at that time.

We consider persons transporting pregnant female dogs in retail commerce for breeding purposes to be exempted from licensing, as this purpose is not one of the six purposes listed in the definition of *dealer.*

*Dealer:* ''For research, teaching, testing, experimentation, exhibition, or for use as a pet…''

Several commenters stated that they sold animals at retail for purposes other than the six specified in the definition of *dealer.* These commenters stated that they believed themselves to be outside of the scope of dealers and thus not subject to licensing but asked for clarification. Some of these commenters, including dog, cat, and rabbit dealers, stated that they sold or transported animals only in order to preserve bloodlines. The commenters who mentioned rabbits also stated that most rabbit breeders sell rabbits for one of three purposes: Food, fur, or preservation of bloodlines.

One commenter stated that, if APHIS were to indicate that all individuals who buy, sell, or transport animals for the preservation of bloodlines (i.e., breeding purposes) are not within the scope of *dealer,* it could provide a loophole for dealers to evade regulatory oversight. That being said, the commenter suggested that individuals who buy, sell, or transport a dog for which there are fewer than 100 registered litters in the United States should be allowed to state that they are acting solely to preserve rare bloodlines.

If an individual is selling animals at retail for breeding purposes, that individual is not a dealer. We do, however, share the commenter's concern that claiming breeding purposes as the purpose for an animal's retail sale could be subject to abuse. Therefore, if we were to receive word that individuals making such claims are, in fact, marketing their animals as pets, we would consider this to be grounds for initiating an investigation to resolve the matter.

Another commenter stated that he bred and sold dogs for participation in agility competitions and asked if he would be considered a dealer.

We are making no changes in response to this comment. It has been our experience that dogs that participate in agility competitions are primarily marketed as personal or family pets. An individual selling dogs at retail for use as pets would be considered a dealer.

*Dealer:* ''Any retail outlet where dogs are sold for *hunting, security, or breeding purposes* . . .''

Many commenters stated that if the purpose of this clause is to exempt sellers and buyers of working dogs from being dealers, its description is too limited in scope. The commenters cited a number of different uses for a dog—a companion animal for individuals with disabilities, a guide dog, a herd or livestock dog, a sled dog, or a rescue

dog—that do not fall within the scope of these uses but that require a dog to be trained to perform a specific function. The commenters urged us to expand the exemption to cover additional uses or to amend it to specify that it covers dogs sold at retail for work purposes.

Individuals who sell or buy dogs at retail for any purpose other than the six listed in the definition of *dealer* are not dealers. The examples cited in the exemption (hunting, security, or breeding purposes) are only intended to illustrate other purposes for buying or selling a dog at retail. As commenters pointed out, those examples are not exhaustive, and there are many other purposes that a dog can be used or trained for that are not included under the definition of *dealer.*

Finally, we note that persons selling dogs at the wholesale level for hunting, security, or breeding purposes are considered to be dealers.

Several commenters stated that they sold dogs at retail only for hunting, security, or breeding purposes but that sometimes birth defects, genetic anomalies, poor temperament, or other flaws preclude them from selling some of the offspring for those purposes. Other commenters stated that they imported and maintained dogs for use in working dog programs, but occasionally if a dog did not work out as a working animal, it would be sold at retail as a pet. The commenters asked whether they were covered by the exemption.

Individuals who intend to breed and sell dogs at retail as working dogs may occasionally raise a dog that lacks the characteristics that would enable it to be sold or used for its intended working purpose. As long as the individual originally intended to raise and sell the dog at retail for that purpose and the individual continues to market his or her dogs for that purpose, the individual could sell that dog at retail and remain exempt.

Another commenter asked whether a person operating a multi-use retail facility, in which some dogs were sold at retail for hunting or security and others were sold for other purposes, would be considered a dealer.

Any person selling dogs at retail for one of the six purposes stated in the definition of *dealer,* including as pets, would be considered a dealer. If the dogs intended to be sold as pets at a multi-use retail facility are commingled with dogs intended to be sold for purposes other than one of the six in the definition of *dealer,* all parts of the multi-use facility would be subject to regulation.

One commenter stated that he sold dogs at retail for hunting, but did so from his home rather than from an outlet. The commenter asked whether he was still exempt from being considered a dealer.

An individual selling dogs at retail solely for hunting purposes is not a dealer.

One commenter asked how APHIS determines from a seller that a dog sold for hunting, herding, or other work will not also be used as a pet.

In making such a determination, we consider the manner in which the seller markets his or her animals and gather feedback from buyers and State, county, and local authorities.

*Dealer:* ''Who does not sell or negotiate the sale of any wild or exotic animal, dog, or cat and who derives no more than *$500 gross income from the sale* of [such animals] during any calendar year.''

Excluded under the definition of *dealer* is any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year. A number of sellers stated that the costs of animal breeding have risen significantly in recent years and a $500 limit for this exemption is too low. They asked that it be adjusted upwards to compensate for inflation. On the other hand, several commenters stated that the $500 *de minimis* exemption is too high.

The gross income limit is set by the AWA. However, it is important to note that, under the proposed rule, there are a number of other ways that persons who sell animals covered by this exemption (including rabbits, guinea pigs (cavies), and rats) can be exempted from licensing, either by not meeting the definition of *dealer* in § 1.1 or through one or more of the licensing exemptions in § 2.1 (see the section below titled ''Retail Pet Store: ''. . . rabbits, guinea pigs . . .'').

Several commenters asked why sales of dogs or cats are not covered by this exemption, and suggested it be amended to exempt individuals who derive no more than $500 gross income from the sale of any animals listed in the definition of *dealer.*

The AWA does not include dogs and cats under this particular exemption.

*Dealer:* Discrepancy with the definition of ''pet animal''

One commenter noted a discrepancy between the list of animals covered under the definition of *pet animal* and animals listed in the definition of *dealer* in § 1.1. The commenter stated that this discrepancy was likely to result in a degree of confusion among breeders regarding whether they fell under the regulations as a dealer. In order to clarify the definition of *pet animal,* the commenter suggested amending the definition to read as follows: ''Pet animal'' means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes: (1) Any wild or exotic or other non-pet species of warm-blooded animals (except birds), such as skunks, raccoons, nonhuman primates, ocelots, foxes, coyotes, etc.; and (2) animals sold at retail in commerce for any of the following purposes: hunting, security, breeding, food, or fiber (including fur).''

We are making no change in response to this comment. Animals listed under the definition of *dealer* are there for the purpose of indicating which persons are subject to regulation and focus on the type of animal and how it is bought, sold, or transported in commerce. Animals listed under the definition of *pet animal* provide examples of ''pets'' as that term is used in the definition of *dealer.*

*Retail Pet Store Definition*

We proposed to revise the definition of *retail pet store* so that it would mean ''a place of business or residence that each buyer physically enters in order to personally observe the animals available for sale prior to purchase and/or to take custody of the animals after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species.'' We also proposed to specify that persons who meet the criteria for an exemption from licensing in § 2.1(a)(3)(iii) of the AWA regulations are *retail pet stores.*

*Retail Pet Store:* ''A *place of business or residence . . .*''

Several commenters wanted to know why, in revising the definition of *retail pet store,* we had removed the word ''outlet'' and added the words ''place of business or residence.''

''Outlet'' as used in the definition has always referred simply to the activity of retailing animals, not necessarily within the confines of a ''brick-and-mortar'' pet store or even a physical location. Accordingly, ''outlet'' in this context can include the sale of animals sight unseen, which is the retail activity that we proposed to regulate. For this reason, we proposed removing the word

''outlet'' and replacing it with ''place of business or residence.''

A commenter stated that, by removing the word ''outlet'' and thus removing sight unseen sales from the scope of the *retail pet store* definition, we had fundamentally reinterpreted the implicit meaning of ''retail'' within the AWA. The commenter stated that ''retail'' has always been understood to mean sale directly to the consumer and added that the method of delivery does not change the underlying structure of the retail transaction. Similarly, several commenters pointed out that sight unseen sales were fairly common during the time period when Congress passed the AWA, but are not mentioned within the Act as an activity that contributes to animal neglect or abuse; these commenters concluded that the AWA must therefore consider retail sales of pets to include sight unseen sales.

We disagree with the commenters that we reinterpreted the meaning of ''retail'' in relation to the AWA, or that the AWA includes sight unseen sales within the scope of retail sales. It is our contention that the AWA envisioned a retail pet store as a business in which the seller, buyer, and animal are physically present so that every buyer can personally observe the animal for sale prior to purchasing and/or taking custody of that animal, thus ensuring that the animals were monitored for humane care and treatment.

In the factsheet,[5] we clarified our proposed change to the retail pet store definition by noting that pet animal retailers who sell their animals to customers in face-to-face transactions at a location other than their premises are also subject to some degree of public oversight, and therefore we would not regulate them for that activity.

Several commenters stated that the factsheet is inconsistent with the proposed rule because a face-to-face transaction at any location other than a fixed residence or place of business is substantively different from going to that residence or place of business to observe animals offered for sale.

Although the AWA does not define ''retail pet store,'' the Act exempted retail sellers of pets from licensing pursuant to the Act. As we mentioned above, it is our contention that it did so because sellers, buyers, and animals are physically present at retail pet stores so that buyers can personally observe the animals before taking custody of those animals, thus ensuring that the animals are monitored for humane care and treatment. Personal observation of an animal offered for sale can and does take place at locations other than a ''brick-and-mortar'' pet store, so restricting the definition of *retail pet store* to ''brick-and-mortar'' stores is unnecessary and not in keeping with the intent of the AWA.

A few commenters asked for a definition of a ''face-to-face'' transaction.

We consider a face-to-face transaction as one in which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal. While the seller's presence at this transaction was implicit in our proposed definition of *retail pet store,* we are amending the definition to actually include the word ''seller'' in order to underscore his or her presence.

Several commenters stated that, while the intent of our proposed changes was likely to exempt small-scale residential breeders from licensing, labeling such breeders as a retail pet store has unintended adverse effects. Many commenters pointed out that local zoning codes often prohibit retail stores in areas designated for residential use, while others stated that State and local tax codes often require retail stores to file differently from ''hobby businesses'' and asked whether APHIS had considered these implications. One breeder asked whether, pursuant to Internal Revenue Service Code Section 183, being considered a retail pet store by APHIS would allow him to claim ''for profit'' status and increase the number of itemized deductions he could claim on his tax form.

We used the term *retail pet store* only for the specific purpose of defining certain persons who sell pets at retail as retail pet stores, thus exempting them from licensing pursuant to the AWA.

One commenter suggested that we should remove the words ''or residence'' and the reference to § 2.1(a)(3)(iii) from the *retail pet store* definition and instead specify that hobby breeders fall under the definition of *retail pet store*. The commenter stated that we could define the term ''hobby breeder'' in the manner specified in current USDA Animal Care guidance for dealers, transporters, and researchers: ''Small-scale breeders with gross sales under $500 per year, provided that such sales do not include wild or exotic animals, dogs, or cats; and/or small-scale breeders with four or fewer breeding cats and dogs who sell the offspring.''

The definition of ''hobby breeder'' provided by the commenter is our longstanding understanding of that term. However, we are retaining the word ''residence'' in the definition of *retail pet store* because we established in *Doris Day Animal League (DDAL)* v. *Veneman* [6] that we consider residential breeders selling pets at retail to be included under the exemption of ''retail pet stores'' in the AWA.

*Retail Pet Store:* ''That *each* buyer physically enters. . . .''

Many commenters objected to the provision that each buyer be required to enter the premises where animals are offered for sale. Some of them presented a number of different scenarios in which, they stated, it would be impracticable to have each buyer personally observe the animal prior to purchasing and/or taking custody of it after purchase. Suggested scenarios included sales to foreign customers; sales to disabled or elderly customers for whom travel to the buyer is a health risk; and sales of a rare breed, with a handful of geographically dispersed owners, for preservation of bloodlines. Many of these commenters added that personally delivering animals to buyers would also be impractical and costly.

We proposed this provision because it is our contention that the AWA considers a retail pet store to be one in which the buyer, seller, and animal are physically present so that every buyer can personally observe the animal available for sale prior to purchasing and/or taking custody of that animal. Animals that are sold at retail sight unseen are not personally observed by buyers prior to purchase. However, it is important to note that we consider the buyer of a pet animal sold at retail to be the person who takes custody of the animal after purchase, even if this person is not the ultimate owner of the animal. Bearing this in mind, we consider many of the scenarios presented by commenters to pertain to issues that would preclude the ultimate owner of the animal, not the buyer, from being physically present to observe the animals. However, a carrier or intermediate handler cannot be designated as the buyer.

Retailers who, for whatever reason, do not consider it possible for each buyer to personally observe their animals prior to purchasing them and/or taking

[5] See footnote 4.

[6] *Doris Day Animal League* v. *Veneman,* 01–5351: published 1/23/2003. Doris Day Animal League filed a rulemaking petition with the Agriculture Department, urging a change in the regulatory definition of ''retail pet store'' so that residential operations would not be exempted. On March 25, 1997, the Secretary published the petition in the **Federal Register** (62 FR 14044) and received more than 36,000 comments. On July 19, 1999, when the Secretary announced in the **Federal Register** that he would retain the definition, and stated the reasons why (64 FR 38546), Doris Day Animal League and other organizations and individuals concerned about the mistreatment of dogs brought this action for judicial review.

custody of them may still be exempt from licensing if they do not sell the animals at retail for one of the six purposes covered under the definition of *dealer.* If they sell the animals at retail for one of those six purposes, but maintain four or fewer breeding females and sell only the offspring born and raised on their premises, they are also exempt from licensing.

Those who own more than four breeding females and wish to continue selling the offspring as pets, sight unseen, can do so by obtaining a license and allowing APHIS inspectors to inspect their facility. As explained in the economic analysis prepared for this final rule, the costs associated with being licensed will be relatively low for all but that small percentage of newly licensed breeders who are not currently compliant with the AWA standards.

Commenters who cited the need to engage in sight unseen sales to preserve a bloodline often cited animal health risks associated with not doing so. An organization representing a rare dog breed, for example, stated that sight-unseen sales of its breed for breeding purposes are necessary in order to keep the breed from becoming extinct. The commenter stated that when the breed is deprived of a wide genetic pool, fatal heritable conditions can begin to appear within the breed. Several other breeders of rare dogs, cats, and rabbits made similar claims. Several small-scale residential breeders stated that their practice of occasionally shipping animals to each other for stud services will no longer be possible and result in less genetic diversity for their breed.

We do not expect licensing of some breeders to result in the extinction of rare breeds, an increase in health issues, or a decrease in genetic diversity. A person who sells and ships animals at retail for breeding purposes is not considered a dealer and thus not subject to licensing. Such persons could continue selling at retail and shipping animals sight unseen as long as the animal is used for breeding purposes and not for any of the six purposes listed under the definition of *dealer* in § 1.1.

One commenter asked how recently buyers must have visited a facility before a seller can sell them a pup remotely. As an example, the commenter wanted to know whether, if buyers visited her facility 2 years earlier to buy a pup, she could remain exempt if she shipped them a second pup without them visiting her a second time.

As indicated in our revised definition of *retail pet store,* each purchase of a pet animal requires that the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase. Accordingly, if the buyers observed this second pup during their visit, this condition is fulfilled. If they did not (e.g., if the pup was not yet born when the prior transaction took place), this condition is not fulfilled.

Several commenters opposed to the rule questioned APHIS' basis in assuming that sight unseen sales of pet animals necessarily constitute a potential risk to animal welfare. To support their point, many of these commenters stated that they regularly buy healthy animals sight unseen or sell healthy animals sight unseen to satisfied customers. The commenters pointed out that in the proposed rule, APHIS had failed to quantify the number of complaints that had arisen regarding sight unseen sales of animals, the percentage of complaints that came from unique customers, and the relative severity of the complaints. The commenters also noted that APHIS did not conduct a survey of all individuals who buy animals sight unseen to see what percentage of them were satisfied with the welfare of the animals they purchased.

On the other hand, several commenters supporting the rule provided accounts of sick and injured pet animals that they had bought sight unseen or had been bought by others known to them. Several veterinarians commented that pet animals bought sight unseen by their owners were often brought to their clinics with a wide range of health problems.

The primary purpose of the proposed rule was to revise the definition of *retail pet store* so that it is consistent with the AWA. It is our contention that the AWA exempted pet retailers from licensing because the seller, buyer, and animal are physically present in the same place so that the buyer can personally observe the animal available for sale prior to purchasing and/or taking custody of that animal, thus monitoring them for humane care and treatment. This physical presence and personal observation does not occur when retailers sell and ship pets sight unseen.

A few commenters stated that they had sold animals sight unseen in the past but no longer did so, and asked that, if the proposed rule is finalized, whether the scope of this definition should not be retroactively applied to them.

The effect of this rulemaking and its enforcement would not be retroactive to any prior actions.

A number of commenters expressed concern that using the Internet or news media to generate customers would result in a loss of the exemption from licensing. Many commenters also expressed uncertainty whether any remote sales completed over the Internet will automatically subject them to licensing requirements, even if the buyer picks up the animal in person after buying it online. One commenter expressed concern that she would be considered an Internet seller because she has posted sales ads online in the past.

We are not regulating the use of the Internet (or any other method of sale). Sellers are free to use the Internet to advertise or sell pet animals, provide information to buyers, and conduct other related activities. Indeed, a seller who sells over the Internet could still be considered a retail pet store provided that, before the buyer takes custody of the animals purchased, the seller, buyer, and animals have been physically present in one location so that the buyer may personally observe the animals.

A number of commenters stated that they preferred the alternative set forth in the proposed rule that considered a regulatory threshold based on percentage of sight unseen sales. The commenters challenged APHIS' assertion that it has no authority under the AWA to require retail pet stores to make and retain sales records, and asked, if this is the case, how APHIS currently determines that a person meets the exemption from licensing in § 2.1(a)(3)(iv) of the regulations.

Persons who are exempt from licensing under the AWA cannot be required under the AWA regulations to keep records. The commenter's question about § 2.1(a)(3)(iv) addresses how we determine a person's eligibility for an exemption without requiring them to keep records. This exemption applies to persons selling fewer than 25 dogs and/or cats each year for research, teaching, or testing purposes. We determine a person's exemption eligibility by inspecting records kept by the research, teaching, and testing facilities that buy these animals. These facilities are required under the AWA to document when and from whom the animals are purchased.

The same commenters pointed out that APHIS' stated second reason for not establishing a threshold, that animals sold sight unseen could be kept under conditions different from those sold to walk-ins, is not resolved by eliminating sight unseen sales from the exemption. The commenters pointed out that a large-scale breeder could appear to be in compliance with the regulations by

establishing a ''brick-and-mortar'' facility for walk-ins while engaging surreptitiously in sight unseen sales of animals bred at another location. The commenters stated that an exemption based on percentage of retail sales would be likely to dissuade such abuses. Another commenter noted that, for many small-scale residential dog breeders, sight unseen sales constitute 20 percent of annual sales. The commenter stated that APHIS should therefore adopt an ''80/20'' threshold of face-to-face to sight unseen sales.

We have no evidence to indicate that allowing retail pet stores to conduct a percentage of their sales sight unseen would discourage large-scale breeders from engaging in fraudulent practices, nor do we have information to indicate why an 80/20 ratio of face-to-face to sight unseen sales would be appropriate.

A few commenters asked that the final rule ''grandfather in'' existing relationships with remote customers, and specify that after the effective date of the rule each new buyer would have to physically enter a place of business or residence.

We are making no changes in response to the comments. As noted above, persons who are exempt from licensing under the AWA cannot be required under the AWA regulations to maintain the records necessary to monitor and enforce such an approach.

*Retail Pet Store:* ''That each *buyer* physically enters. . . .''

A few commenters asked whether a buyer could use an agent to serve in his or her place.

As we mentioned above, for purposes of our definition of *retail pet store,* we consider the buyer to be the person who takes custody of the animal after purchase. This person may differ from the ultimate owner of the animal but cannot be acting as a carrier or intermediate handler.

*Retail Pet Store:* ''That each buyer *physically* enters. . . . ''

A number of commenters asked why a buyer's physical presence at a place of business or residence was necessary to protect animal welfare. The commenters pointed out that Web-based technologies allow buyers to ''virtually'' observe animals that are for sale. On the other hand, several commenters pointed out that virtual technologies can be manipulated to provide an inaccurate depiction of animal care at a seller's premises.

While many breeders use Web-based technologies to provide buyers with visual and other information about the animals they sell, we agree with the commenters' point that such technologies can be used to inaccurately depict the health and condition of the animal for sale.

Several commenters suggested amending the definition to allow buyers the option to waive the requirement to physically enter the seller's place of business or residence to observe the animals offered for sale. The commenters stated that this would prevent buyers who have an existing relationship with a seller from having to travel long distances to view animals when they felt confident about the care standards provided by the seller. A few commenters stated that this waiver should be in writing as documentary proof.

One commenter suggested that the regulations should require that the seller have a return policy and that language requiring physical entry of the business or place of residence be removed from the definition of *retail pet store.* The commenter suggested that we define *return policy* as ''a written policy provided to a purchaser in a sales contract that contains provisions for returning the animal, reimbursing the purchaser, and adjudicating disputes.'' The commenter stated that return policies ultimately foster animal welfare, since sellers that provide poor care for their animals are subject to frequent returns and less able to turn a profit.

We are making no change in response to these comments. Waivers and return policies used in place of requiring buyers to observe the animals face-to-face would be appropriate for a rule focused on consumer protection, not animal welfare, and could result in instances in which retail pet stores sold animals to buyers without the buyers being physically present to personally observe the animals prior to purchasing and/or taking custody of them. This would be inconsistent with the AWA.

Some commenters noted that the proposed rule provides no evidence that purchasing or shipping animals sight unseen jeopardizes animal welfare and treatment. Several of these commenters pointed to various scenarios as examples in which such sales could be conducted sight unseen and without significant risk, such as when the buyer is a repeat customer with whom the seller has previously done business, when the buyer and seller are relatives or close friends for whom a preexisting relationship exists, or when the breed is so rare that each breeder is personally known within the community of potential buyers. One commenter, a State association of dog owners, cited the results of an informal survey showing that most of its members buying dogs sight unseen over the Internet saw few or no health problems in the dogs they purchased. Conversely, a veterinary medical association cited a study concluding that breeders who advertise on large-scale puppy sales Web sites and sell to customers sight unseen are less knowledgeable about breed-specific health issues compared to national parent club breeders, and that such breeders are often less likely to perform screening tests on their breeding dogs to detect undesirable heritable health risks.

We are making no changes in response to these comments. Retail sales that are entirely sight unseen do not require the buyer to be physically present in order to personally observe the animal available for sale prior to purchasing and/or taking custody of that animal. It is our contention that this concept of physical presence for the purposes of personal observation is consistent with the AWA's use of the term *retail pet store.*

*Retail Pet Store:* ''That each buyer physically *enters*. . . . ''

A significant number of residential breeders objected to this provision. Many of the commenters cited human health and safety concerns and others cited animal health risks associated with opening their residence to buyers. They pointed out that many diseases of dogs, in particular, are zoonotic, and that buyers who are ill may transmit diseases to animals at their residences. Several of these commenters also stated that they had no way of knowing the disease status of any animals with which a buyer has recently come in contact, and expressed concern that clothing could serve as fomites (inanimate objects or substances capable of transmitting infectious organisms from one individual to another) for diseases of dogs. A few commenters stated that their animals become agitated when strangers enter their premises and stated that requiring buyers or inspectors to enter could therefore adversely impact animal welfare.

A place of business can be any location in which the seller, the buyer, and the animal are physically present so that every buyer can personally observe the animal offered for sale prior to purchasing and/or taking custody of that animal(s) after purchase.

On the other hand, several commenters stated that, for the sake of animal welfare, buyers need to personally observe the breeding and living conditions of animals available for sale prior to purchasing and/or taking custody of those animals. The commenters suggested that we amend

the definition of *retail pet store* to specify that buyers must be able to see these conditions.

Such an amendment would make the definition of *retail pet store* in our regulations significantly more restrictive than its meaning in the AWA. The AWA neither authorizes nor requires public oversight of breeding stock or the premises on which animals for sale at retail are maintained.

Several commenters stated, both before and after issuance of the APHIS factsheet, that face-to-face sales at a mutually agreed-upon location should suffice in lieu of physically entering a fixed place of business or residence. Animal rescue organizations, in particular, supported this point by noting that buyers seldom visit their primary location, but that they always have face-to-face interaction with buyers at adoption events or when delivering the animal to the buyer.

Such a face-to-face interaction is consistent with the AWA.

One commenter suggested that we require a seller to have face-to-face interaction with the buyer at some point prior to purchase and/or taking custody of an animal, but suggested that we decouple this from personal observation of the animal. The commenter stated that this would allow breeders who had developed long-standing relationships with existing buyers to ship dogs sight unseen while meeting the intent of the rule as they understood it. Another commenter agreed and pointed out a number of scenarios in which the breeder would be known to the buyer, but may not visually inspect the animals before purchase (buying from a blood relative or close friend, buying from a breeder with whom one has previously done business, and buying under time constraints that do not allow for visual inspection of the animal).

We are making no changes in response to these comments. The definition of *retail pet store* is consistent with the AWA in that it requires that the seller, buyer, and the animal available for sale be physically present so that every buyer can personally observe the animal prior to purchasing and/or taking custody of that animal.

A few commenters stated that, instead of requiring the buyer to enter the premises to observe the animal before purchase and/or taking custody, we should require all animals sold at a place of business or residence to be accompanied by a certificate of veterinary inspection attesting to their health and freedom from genetic disorders in order for that place of business or residence to meet the definition of *retail pet store.* Other commenters similarly noted that the required health certificate currently issued by a veterinarian for animals being shipped should be sufficient proof that the animal is in good health and that therefore entering the premises to observe the animal before purchase is unnecessary. Similarly, another commenter asked that if a dog is shipped internationally whether the requirements for shipping the dog (airline health certificate, USDA endorsed certificate, shot records) could be used in lieu of a face-to-face transaction.

On the other hand, several commenters questioned the efficacy of veterinary certificates generally, stating that they had bought a pet that was accompanied by a veterinary certificate only to later discover the animal had a genetic condition or longstanding malady. For this reason, the commenters stated APHIS should review its policing of health certificates issued for dogs in transit to ensure that certificates are valid.

We are making no changes in response to these comments. Persons exempted from licensing under the AWA, such as retail pet stores, are not required to obtain a veterinary health certificate when shipping an animal via commercial transport. For those licensees required to obtain such a certificate from a licensed veterinarian, the certificate only affirms that transport of the animal is not likely to pose a health risk to that animal or to other animals in transit. No relationship exists between issuance of a health certificate for an animal and the standard of care provided by the seller receiving the certificate. Finally, regardless of a certificate, any retail transaction that does not include the element of public oversight is inconsistent with the AWA.

Several commenters stated that persons operating foster homes for abused or rescued animals should be exempted from having buyers/adopters physically enter their premises. They stated that requiring such entrance would likely dissuade both foster persons and potential adopters from accepting dogs and cats and would ultimately adversely impact animal welfare.

Persons who engage solely in face-to-face retail transactions are retail pet stores, regardless of whether these transactions occur at a residence or at some other location; as we noted above, most animal rescues engage solely in such types of retail transactions. Persons who foster pet animals in their homes on behalf of these rescues may conduct these face-to-face transactions at an alternative location and therefore would not be required to allow adopters to enter their premises.

Several commenters stated that many of the reasons that render it difficult for a buyer to physically enter a seller's place of business or residence also apply to completing face-to-face transactions (e.g., age, health, or physical capacities of the buyer, distance between the seller and buyer, geographical isolation of seller).

The commenters assumed that the buyer of an animal sold at retail is the ultimate owner of the animal. However, as noted above, we consider the buyer of an animal sold at retail to be the person who takes custody of that animal after purchase; this might not be the ultimate owner. For purposes of the definition of *retail pet store,* it is this person, not necessarily the ultimate owner, who must be physically present to observe animals available for sale. However, a carrier or intermediate handler cannot be designated as the buyer.

One commenter objected to face-to-face transactions off-site on the grounds that they would put animal rescues and shelters at a competitive advantage over commercial retailers, since the former would be able to conduct face-to-face transactions of animals through networks of transport volunteers rather than by any employee of the rescue group or shelter actually meeting the buyer, while commercial retailers would be restricted to having only their employees conduct the sale.

As is the case with commercial pet retailers, representatives of rescue groups also must be physically present at a place of business so that potential buyers/adoptees can personally observe their animals before purchasing and/or taking custody of them.

A commenter noted that substandard Internet sellers could shift their model of business to selling animals face-to-face at a location off their premises to avoid licensing, as the proposed rule will not impact such activities.

We carefully considered this comment when we decided to allow the seller, buyer, and animal available for sale be physically present at the same place, but not necessarily the seller's premises. This does not create an incentive for and a means of avoiding licensing for the types of dealers the AWA encompasses.

Internet sellers who shift their model of business in such a manner would have to provide buyers with the opportunity to personally observe animals for sale prior to purchasing and/or taking custody of them, and thus will engage in a retail model that is consistent with the AWA. Our analysis

of the industry is that dealers who currently use an Internet sales business model would not find it economically viable to shift their business model in such a manner and would instead opt for licensing and inspection by USDA. As noted in our economic analysis, we believe that between 2,600 and 4,640 dog breeders who currently claim retail pet store status will no longer be able to do so under this rule. However, USDA will monitor the rule's implementation and consider proposing new rules should we determine that the AWA's intent is not being served.

Another commenter suggested that, if sellers who have face-to-face transactions at shows, flea markets, and auctions are exempt from licensing, then the shows, flea markets, and auctions themselves should have to be licensed. (The commenter stated that events that solely serve non-profits should not have to be licensed.)

If a seller is selling regulated animals to buyers at a show or event solely in retail, face-to-face transactions, that seller meets the definition of a retail pet store and is exempt from licensing regardless of the physical venue in which the animals are offered for sale. Auctions and other events in which regulated animals are sold at wholesale must be licensed.

One commenter stated that both APHIS and other commenters may have understated the difficulty of meeting in public to purchase dogs or cats face-to-face. The commenter pointed to several State and local regulations that forbid or restrict sales or commercial transactions in public areas. The commenter concluded that, because of these difficulties, APHIS should revise the definition of *retail pet store* to allow some sight unseen sales to take place.

We are making no changes in response to this comment. If local or State ordinances prohibit the sale of dogs or other pet animals in public areas, roadsides, or other locations, retailers of pet animals residing in the States or locales affected would retain the option of conducting business in any other location that is not prohibited by law.

One commenter asked what sort of documentation APHIS would ask from sellers that a face-to-face transaction had occurred between them and the buyer of a pet. The commenter stated that this would almost certainly require recordkeeping if the buyer and seller offer differing accounts of the transaction.

In instances where there is some question about the method of sale, APHIS will conduct an investigation and determine whether a sight unseen sale has occurred.

*Retail Pet Store:* ''In order to personally observe the animals . . .''

Several commenters stated that APHIS provided no evidence that having individuals personally observe pet animals prior to purchase will result in more humane treatment and healthier pets. A number of commenters stated that, while personally observing an animal prior to purchase and/or taking custody will allow a buyer to visually inspect the animal for signs of neglect or symptoms of certain diseases, a simple visual inspection will not reveal to the buyer whether the animal has genetic conditions or other maladies; several commenters pointed out that a number of genetic conditions of dogs and cats have a significant latency period. Another commenter pointed out that personal testimonials from animal welfare organizations received during the comment period have provided evidence that animals sold at retail often have genetic conditions that can only result from inbreeding or overbreeding.

Our focus in this rule is to ensure that our definition of *retail pet store* is consistent with the AWA. It is our contention that the AWA exempted retail pet stores from Federal licensing and inspection requirements because, at such establishments, buyers are physically present in order to personally observe the animal available for sale prior to purchasing and/or taking custody of that animal, thus monitoring them for humane care and treatment.

As an alternative to requiring buyers to personally observe the animals for sale, face-to-face, several commenters stated that all retail breeders should have to be licensed pursuant to the AWA regulations. On the other hand, a number of commenters pointed out that licensing of all such breeders would expand the scope of regulated entities far beyond APHIS' capacity to enforce the AWA regulations.

We are making no change in response to these comments. The AWA exempts certain breeders from licensing.

One commenter asserted that the blind are incapable of personal observation of animals.

As long as the buyer is physically present with the animals prior to purchasing them and/or taking custody of them after purchase, it is considered an acceptable transaction for the purposes of maintaining the status of a retail pet store.

*Retail Pet Store:* ''Where only the following animals are sold or offered for sale . . .''

One commenter stated that this phrase is ambiguous because there is no distinguishing factor defining the difference between which animals are sold and which are offered for sale.

Animals offered for sale are the property of the seller, while animals that are sold are the property of the buyer.

*Retail Pet Store:* ''cats . . .''

Several commenters noted that most pet cats come from sources other than small-scale cat breeders and that regulating such breeders is not necessary. A cat club representative cited a 2010 survey by the American Pet Products Association revealing that fewer than 1 percent of cats are obtained through Internet/online contact and only 2 percent of owned cats are obtained from breeders of pedigreed cats. The commenter stated that there is no need for Federal regulation of small or moderate scale home-based breeders of cats who have more than four breeding females, regardless of whether or not pet buyers come to their places of business.

Given the presence of commercial cat breeders selling and shipping cats sight unseen, we consider some degree of Federal regulation to be necessary to ensure adequate oversight.

*Retail Pet Store:* ''. . . rabbits, guinea pigs . . .''

Several commenters asked APHIS to clarify for those who own rabbits and guinea pigs (cavies) the conditions under which they are required to obtain a USDA license.

Only a very small number of persons selling rabbits and guinea pigs will be affected by this rule. Such persons may be required to obtain a license if the following applies to their situation: (1) They sell animals sight unseen; (2) They sell the animals as pets and not for purposes of food or fiber (including fur) or agricultural purposes; and (3) They do not qualify for the $500 gross income limit from licensing.

Several commenters noted that the regulations were vague on when rabbits are to be considered livestock or pets for regulatory purposes.

If a person sells rabbits only for the purposes of food or fiber (including fur), those animals are considered to be farm animals and the person is exempt from licensing.

Some commenters were concerned that the rule would require licensing of National and State Future Farmers of America (FFA) organizations and 4–H participants who sell their rabbits and limit the ability of youth to breed and show rabbits at county fairs and other exhibitions.

FFA and 4–H participants who sell their rabbits for the purposes of food or fiber (including fur) or in face-to-face

transactions at county fairs, rabbit shows, and other agricultural exhibitions are exempt from licensing regardless of the number sold.

One commenter concerned about the sale of rabbits asked whether this proposal has any provisions that would stop some rabbit rescue organizations from buying rabbits from commercial sources and reselling them as ''rescues'' for a substantial profit.

APHIS investigates all credible reports we receive of unlicensed activities involving sales of covered pets.

A few commenters stated that we should entirely exempt guinea pig (cavy) breeders from licensing.

Guinea pigs (cavies) are under the authority of the AWA, and APHIS is tasked with ensuring that all guinea pigs sold as pets are monitored for their humane care and treatment.

*Retail Pet Store:* ''. . . rats . . .''

Some commenters asked APHIS to clarify for those who own rats the conditions under which they would have to obtain a USDA license.

Under the regulations, we currently cover rats other than those of the genus *Rattus* bred for use in research. Therefore, persons retailing covered rats would need to obtain a license if they are not otherwise exempt.

*Retail Pet Store:* ''. . . gophers . . .''

One commenter stated that gophers should be removed from the list of pets that can be sold without licensing in the definition of *retail pet store.* The commenter noted that while the other animals listed in that definition have historically been sold as pets, gophers have not and should more accurately be classified as ''wild animals.''

We are making no changes in response to this comment. Our research shows that gophers have been bought and sold as pets in the United States for at least a decade.

*Retail Pet Store:* ''. . . domestic farm animals . . .''

Some commenters were uncertain about how the proposed rule would affect the ownership, breeding, and sale of farm animals.

One commenter stated that the regulations are unclear with respect to livestock which may either be reared for utility purposes or kept as pets. The commenter noted that transfer of ownership of equids, bovids, caprids, lagomorphs, and domestic fowl is regularly conducted sight unseen both for utility purposes and as pets, and that sellers are sometimes not aware of the buyer's intended use of the animals. The commenter asked that APHIS add clarifying language to the regulations that allows the free exchange of domestic livestock and clarifies that livestock are, in most instances, not pets.

Farm animals intended for use as food, fiber, or other purposes specified under the definition of *farm animal* in § 1.1 are exempt from regulation. Farm animals intended to be used as pets, for biomedical research, or other nonagricultural research are regulated under the AWA. Persons exhibiting farm animals at agricultural shows, fairs, and exhibits are exempt from licensing. However, persons exhibiting farm animals for nonagricultural purposes (such as petting zoos) are required to be licensed.

A national livestock organization asked that we include language allowing face-to-face transactions of farm animals.

As noted above, farm animals intended for use as food, fiber, or other purposes specified under the definition of *farm animal* in § 1.1 are exempt from regulation, regardless of whether those animals are sold face-to-face or sight unseen. Farm animals sold specifically as pets in face-to-face transactions are also exempt from licensing. On the other hand, farm animals used for biomedical or other nonagricultural research, or for nonagricultural exhibition, are regulated under the AWA and require licensing.

One commenter suggested that we specifically exempt horses not used for research purposes from the retail pet store definition.

In § 1.1, the term *animal* excludes horses not used for research purposes, which specifically exempts them from regulation.

One commenter expressed concern that if a breeder maintains both farm animals and regulated animals on his residence, and the farm animals are deemed responsible for the breeder failing to meet the regulatory standards for the regulated animals, the breeder could be penalized and APHIS could remove the farm animals from the premises.

Farm animals intended for use as food, fiber, or other purposes specified under the definition of *farm animal* in § 1.1 are exempt from regulation, and therefore cannot be removed from a premises due to failure to meet the AWA regulations.

Another commenter asked if any livestock sold to a buyer who does not have a ''farm plan'' on file with USDA would be considered as pets.

The commenter is referring to a type of business plan required for certain Farm Service Agency loans. As noted above, animals sold and intended for use as food, fiber, or other purposes under the definition of *farm animal* in § 1.1 are exempt from regulation regardless of whether the buyer has such a plan on file.

*Retail Pet Store:* ''. . . birds . . .''

A few commenters requested that APHIS create an exemption in the regulations for raptors. One commenter requested that we include specific exemptions from licensing and all other regulations promulgated under the AWA for falconers, raptor propagators, those that conduct education of the public regarding raptors, and raptor permittees. The commenter stated that these persons are already subject to other stringent Federal regulations designed to ensure the welfare of these raptors, including licensing, facility inspections, reporting requirements, and permit fees. Another commenter asserted that raptors are not pets, and thus do not fall under the scope of the AWA; hence their owners do not need to be licensed.

Another commenter stated that we should exempt parrot breeders from licensing on the grounds that subjecting them to licensing will promote smuggling of parrots from other countries. Similarly, a commenter expressed concern that waterfowl could be affected by the proposed rule and requested that we include in our regulations an exemption for birds already regulated under the Migratory Bird Treaty Act of 1918.

Finally, one commenter noted that there is no clear definition of ''bird(s)'' in part 1. Because of this, the commenter wondered about the extent to which the regulations in parts 2 and 3 pertain to birds.

On June 4, 2004, we published a final rule in the **Federal Register** (69 FR 31513–31514, Docket No. 98–106–3) that amended the definition of *animal* in the AWA regulations to include birds, other than those bred for use in research. However, APHIS has not established standards specific to birds.

*Retail Pet Store:* ''. . . coldblooded species''

A number of reptile breeders stated that the industry is highly self-regulated, and that sight unseen sales of reptiles tend to be of high-end, extremely valuable animals where animal welfare is paramount for the sake of the sale. The commenter suggested that sellers of cold-blooded animals should be exempt from licensing, whether their sales are face-to-face or sight unseen. Another commenter asked how APHIS could require licensing of individuals who sell reptiles sight unseen, when the reptiles do not fall under the definition of *animal.*

As the commenter noted, cold-blooded species do not fall under the definition of *animal* in § 1.1 and are therefore not regulated.

*Retail Pet Store:* ''A retail pet store also includes any person who meets the criteria in § 2.1(a)(3)(iii) of this subchapter.''

A number of commenters raised questions regarding the reference to § 2.1(a)(3)(iii) that we proposed adding to the definition of *retail pet store.* Many of these commenters were unsure why persons meeting these criteria were considered retail pet stores. A few of these commenters asked whether being considered a retail pet store because of these criteria allows a person to claim the exemption in § 2.1(a)(3)(i). One commenter, who met the criteria in § 2.1(a)(3)(iii), asked why he would need two separate exemptions from licensing.

Several commenters surmised that we included this criterion within the scope of the proposed definition of *retail pet store* because we proposed to remove the exemption in § 2.1(a)(3)(vii); many of these commenters referred to § 2.1(a)(3)(vii) as the ''hobby breeder'' exemption, and suggested that our intent was to provide some hobby breeders an exemption from licensing.

However, many of these commenters pointed out that the criteria in § 2.1(a)(3)(iii) are significantly more restrictive than those in § 2.1(a)(3)(vii). Although a number of these commenters agreed with APHIS that retaining the exemption unchanged in § 2.1(a)(3)(vii) would continue to allow commercial Internet retailers of dogs and cats to remain exempt from licensing, the commenters stated that we had failed to provide a rationale for removing the exemption from licensing in § 2.1(a)(3)(vii) for certain dog and cat fanciers.

A number of self-described dog and cat fanciers stated that they did not meet any of the criteria in our proposed definition of *retail pet store,* but offered various reasons why they should be exempt from licensing. These reasons included: Because their animals are maintained in private residences; because dog and cat fanciers provide adequate care and treatment for their animals; and because dog and cat fanciers are ''known commodities'' among their clientele and that failing to provide adequate care for animals they offer for sale would ruin their reputations. Several of these commenters suggested that, in the final rule, we should specify that all dog and cat fanciers, rather than all individuals who meet the criteria in § 2.1(a)(3)(iii), are exempt from licensing; a number of these commenters suggested that we keep the exemption in § 2.1(a)(3)(vii) in the regulations, but specify that it pertains solely to dog and cat fanciers.

The commenters who surmised that we proposed to include persons meeting the criteria of § 2.1(a)(3)(iii) in the definition of *retail pet store* because we proposed to remove § 2.1(a)(3)(vii) from the regulations are correct. The AWA exempts retail pet stores from licensing pursuant to the Act; this is the only exemption from licensing that is specified for retailers within the AWA. The exemptions from licensing that had existed in § 2.1(a)(3)(i) and § 2.1(a)(3)(vii) were in the AWA regulations because we had considered individuals who met the criteria in those paragraphs to be retail pet stores.

In the proposed rule, we proposed to revise the definition of *retail pet store* to make it more restrictive than it had previously been; this is because, as we noted above, the existing definition had begun to be interpreted in a manner that was inconsistent with the AWA.

Our proposed revisions to the definition of *retail pet store* conflicted with the criteria in § 2.1(a)(3)(vii). However, as we mentioned above, that paragraph of the AWA regulations only could exist if we consider all persons who meet the criteria in the paragraph to be *retail pet stores.* Thus, we proposed to remove § 2.1(a)(3)(vii) from the regulations, since it would have otherwise provided an exemption from licensing for people who did not meet our proposed revision to the definition of *retail pet store.*

However, we recognized that if we were to remove § 2.1(a)(3)(vii) from the regulations, we would expose to licensing a subcategory of individuals, those with four or fewer breeding female dogs, cats, and/or small exotic or wild mammals who sell at least some of the offspring of these animals sight unseen, that we consider to present a low risk of noncompliance with the AWA. It has been our experience that such individuals maintain few enough breeding females on their premises to offer adequate care and treatment to each animal. To continue to exempt these individuals from licensing, we included the ''breeding females'' exemption in § 2.1(a)(3)(iii) within the scope of the definition of *retail pet store.*

During preparation of this final rule, we then realized that § 2.1(a)(3)(iii), as written, applied both to retailers and to wholesalers with regard to breeding females. If we were to finalize the proposed definition of *retail pet store* to include persons who meet the criteria in § 2.1(a)(3)(iii), this could mistakenly allow wholesalers to consider themselves to be retail pet stores, although they do not engage in retail sales. For these reasons, we are not removing § 2.1(a)(3)(vii) from the regulations in this final rule. Instead, we are revising that exemption so that it duplicates the criteria contained in § 2.1(a)(3)(iii) but specifies that those criteria moved into § 2.1(a)(3)(vii) pertain only to retailers. Conversely, we are amending the exemption in § 2.1(a)(3)(iii) to specify that it pertains only to wholesalers. Because of these amendments, we are in turn amending our proposed definition of *retail pet store* so that it includes individuals who meet the criteria in § 2.1(a)(3)(vii) under the definition of *retail pet store.* We are also making a nonsubstantive change to the definition of *retail pet store* based on our inclusion under that definition of persons who meet the criteria in § 2.1(a)(3)(vii). (These revisions are set forth in the regulatory text at the end of this rule.)

Finally, it is not possible under the AWA to exempt a purebred dog or cat fancier from licensing solely because he or she is a purebred dog or cat fancier. However, dog and cat fanciers who meet the criteria in § 2.1(a)(3)(vii) will be exempt from licensing because we consider them to be retail pet stores for the purposes of the AWA regulations.

*$500 Gross Income Limit*

We also proposed to remove the limitation concerning the source of gross income in § 2.1(a)(3)(ii) of the regulations, which exempts from licensing ''any person who sells or negotiates the sale of or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of any animal except wild or exotic animals, dogs, or cats to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license.'' We proposed removing the limitation on the source of sales so that such persons could also sell their animals at retail if they wish and remain exempt under the $500 limit.

Several commenters stated that the $500 gross income limit should be much higher because of inflation and the rising costs of animal breeding. Conversely, some commenters stated that the $500 limit for the exemption is too high because no animal breeder selling his or her animals should be exempt from licensing.

We are making no changes in response to these comments. The $500 gross income limit was mandated by Congress within the AWA. However, it is important to note that under the

proposed rule, there are a number of ways that persons who sell animals covered by this exemption (including rabbits, guinea pigs (cavies), and rats) can be exempted from licensing, either by not meeting the definition of *dealer* in § 1.1 or through one or more of the licensing exemptions in § 2.1 (see the section below titled ''Retail Pet Store: ''. . . rabbits, guinea pigs . . .'').

A number of dog and cat breeders stated that the $500 gross income limit was too low for such animals.

The $500 gross income limit exemption does not apply to dogs or cats.

*Breeding Females and Offspring*

Section 2.1(a)(3) of the AWA regulations exempts certain persons from licensing requirements. Prior to this final rule, paragraph (a)(3)(iii) had exempted ''any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.'' The paragraph further provided that the exemption did not extend to anyone in a household who collectively maintains a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals, on premises on which more than three breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than three breeding females, cats, and/or small exotic or wild mammals, regardless of ownership. In the proposed rule, we increased the number of breeding females that may be maintained to four.

(As noted earlier, we have revised our proposed definition of *retail pet store* so that it no longer includes individuals who meet the criteria in § 2.1(a)(3)(iii). However, we are revising and retaining the direct retail exemption in § 2.1(a)(3)(vii), linking it to the *retail pet store* definition, and adding to the direct retail exemption the criteria in § 2.1(a)(3)(iii). In other words, the requirement regarding the number of breeding females remains part of the *retail pet store* definition.)

In the proposed rule, we solicited comments on our proposed change to the exemption limit. We also invited comments regarding the variability of litter size by breed and the impact that variability may have on the setting of size thresholds, as well as comments on whether to regulate breeders by number of offspring sold or by number of breeding females.

A few commenters stated that we should substantially revise the exemption. One commenter stated that the exemption should cover only those breeders who breed their animals no more than once annually; other commenters suggested breeding intervals of 12, 18, and 24 months. Another commenter stated that the exemption should specify the conditions under which breeding females must be raised on their premises in order to qualify for an exemption from licensing, rather than set a limit on the number of breeding females on the premises.

As we discuss at greater length below, this exemption is based upon our determination that individuals who maintain four or fewer breeding females on their premises and sell only the offspring of these females are likely to provide adequate care for these animals. Breeding Females and Offspring: ''Any person who *maintains* a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals. . . .''

A number of commenters asked what constitutes maintaining a breeding female on a premises. Several commenters asked if breeding females that stay temporarily at a residence are considered to be maintained at the residence. A few of the commenters stated that breeders should only be considered to maintain a breeding female at their residence when the breeding female's stay at the residence does not have a fixed end date. All of these commenters asked APHIS to define or otherwise explain ''maintain'' in the final rule.

A breeding female is considered to be maintained at their premises if it resides at that premises, even if temporarily. That being said, as we discuss below, the threshold in this exemption applies only to dogs, cats, and/or small exotic or wild mammals that an APHIS inspector has determined to be breeding females, and only applies to such females if their offspring are sold as pets.

*Breeding Females and Offspring:* ''Any person who maintains a *total of four or fewer* breeding female dogs, cats, and/or small exotic or wild mammals. . . .''

A number of commenters asked whether, by ''total,'' we meant four or fewer breeding female dogs, in total, four or fewer breeding female cats, in total, and four or fewer breeding female small exotic or wild mammals, in total, or the total number of breeding female dogs, cats, and small exotic or wild mammals on the premises that is four or fewer. In the latter case, the commenters stated that this exemption was too stringent for many 4–H, FFA, and rural families, particularly given our decision to remove § 2.1(a)(3)(vii), which exempted any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer's own use and who buys no animals for resale. The commenters stated that APHIS should engage in dialog with FFA and 4–H families and set a more reasonable number based on that dialog.

Another commenter asked whether we meant four breeding female dogs of each breed on the premises, or four breeding female dogs, total, regardless of breed.

A number of commenters suggested that, if the term ''total'' is meant in a partitive sense (i.e., four or fewer breeding female dogs, four or fewer breeding female cats, four or fewer breeding female small exotic or wild mammals), the sentence should be amended to make this clear.

The exemption refers to the aggregate number of female dogs, cats, and/or small exotic or wild mammals on the premises who are bred and whose offspring are sold as pets. As we stated in the proposed rule, we consider someone who maintains four or fewer such females to be a low-risk facility. What we meant by this was that, based on our experience, an individual who maintains four or fewer such females on his or her premises has demonstrated that they are capable of providing adequate care and treatment for the animals on their premises, so we do not consider Federal oversight to be necessary.

Furthermore, interpreting the exemption in such a manner is not likely to adversely impact rural families or anyone participating in FFA or 4–H activities. Most FFA and 4–H exhibitors sell their animals for agricultural purposes and/or in face-to-face transactions and thus are not dealers. They therefore do not need to claim an exemption from licensing.

A number of commenters stated that litter sizes for hobby breeds and small breeds are considerably smaller than those for larger breeds, that four breeding females are therefore too few to maintain a viable breeding program, and that setting the exemption at four would accordingly encourage overbreeding of the animals. They also stated that a lack

of genetic diversity from having four or fewer breeding females would result in offspring that would be less desirable to buyers seeking strong breed characteristics. Others noted that small-scale breeders typically do not breed their dogs every estrus cycle. As a female will produce offspring with the same strengths and weaknesses each time, such breeders will often wait until her female pups mature and then breed the best of them in order to further improve the breed line. For these reasons, several breeders stated that 6 breeding females is the minimum necessary to have a viable breeding program for their breed; other breeders stated that it should be 10, 12, or 20 for their breed. One commenter stated that USDA has historically acknowledged a ''tipping point'' at 60 breeding females after which animal welfare violations become disproportionately common. The commenter asked why 60 had not been selected as the cut-off.

On the other hand, a few commenters opposed our proposal to increase the maximum number of breeding females allowed under the licensing exemptions in § 2.1(a)(3)(iii) from three to four. Most of those commenters stated that this change would allow breeders to produce greater numbers of pets that could potentially be abandoned or sent to shelters and euthanized. One commenter opposed the changes because the current number was put in place years ago for a reason, and that reason, the commenter stated, has not changed.

Rather than simply raising the number of breeding females allowed under the exemption to one of the numbers suggested by commenters, a number of commenters suggested alternate amendments that, they stated, would better serve the needs of the regulated community. One commenter supporting this approach stated that raising the number from three to four or fewer breeding females for pet fanciers is irrelevant, because numbers change within fancier practices in ways that are different from a wholesale operation. Similarly, a commenter stated that one set of regulations for all breeds of cats fails to consider the differences in growth rates and breeding ages among breeds. These commenters stated that we should establish breed-specific thresholds, or, at least, breed categories with various thresholds (e.g., ''Breeders of a Category A dog may have no more than four breeding females; Category B, six breeding females,'' and so on).

Another commenter stated that we should set the exemption from licensing at 4, but should create subclasses of licensees, set at thresholds based on the total number of breeding females, and should specify the standards in part 3 that apply to each class, e.g., ''A class A–1 breeder has between 5 and 10 breeding females, and must meet the requirements of §§ 3.7–11.''

We are making no changes based on these comments. The number of offspring that breeding females are likely to produce annually did not factor into our determination to propose raising the threshold in the exemption to four breeding females. Rather, this decision was based on our experience that an individual with four or fewer breeding females can generally be considered a low-risk facility with regard to animal welfare, so we do not consider Federal oversight to be necessary.

In addition, we recognize that depending on the species and the breeds within the species, animals can mature at different rates. In determining the number of eligible breeding females maintained by a breeder, an APHIS inspector would consider each animal's age, health, and fitness for breeding. We consider it impractical and unnecessary to establish specific growth rate and breeding age standards for every breed and every species of pet animal.

*Breeding Females and Offspring:* ''Any person who maintains a total of four or *fewer breeding female* dogs, cats, and/or small exotic or wild mammals. . . .''

A considerable number of commenters expressed uncertainty about what APHIS considers to be a breeding female and asked us to define the term in the final rule. Many of these commenters stated that ''breeding'' should not be considered equivalent to ''sexually mature and sexually intact.'' Several commenters cited health concerns with having their dogs breed. One of the commenters pointed out that her female dogs become sexually mature at 6 months of age, but that breeding them at that age would pose a serious health risk to the female dog and had little possibility of resulting in a live litter. Other commenters raised a similar point regarding older female dogs. A number of these commenters stated that ''retired'' female dogs should not count towards the total; many of these commenters cited peer-reviewed articles [7] stating that keeping a retired female sexually intact is conducive to animal health and welfare. A number of commenters stated that a female dog should be considered a breeding female only when it is an age at which it is generally agreed her breed is capable of producing a live litter.

A few commenters stated that most breeders do not breed their female dogs until they are old enough to have a viable litter and have passed all relevant health inspections, and stated that a female should not be considered a breeding female until both of these conditions have been fulfilled.

Other commenters agreed that a female dog that is sexually mature and intact should not necessarily be considered a breeding female, but did so for different reasons. Breeders of female show dogs stated that many competitions require the animals to be sexually intact in order to be shown, but that few show breeders breed their animals during the time period that they are exhibiting them. Other commenters pointed out that a female dog may be retired for any number of reasons (age, number of litters produced to date, producing offspring with undesirable characteristics), but still reside on a residence. These commenters stated that a female dog should be considered a breeding female only when it is actually being bred.

However, a number of commenters pointed out the limitations of such an interpretation of ''breeding female'': Just because a breeding female is not currently being bred does not mean that she will never be bred. The commenters also noted that this interpretation could result in enforceability issues for APHIS: A breeder could qualify for an exemption one year, need to be licensed the next, and again qualify for an exemption the third. Another commenter pointed out that breeders do have ''accident'' litters from time to time, so a breeder's intent to not breed a female in a certain year may not actually mean that the female dog is not bred.

While we recognize that breeders have several reasons for not breeding an intact female, for the purposes of enforcement, APHIS has to assume that a female that is capable of breeding may be bred. However, in determining whether an animal is capable of breeding, an APHIS inspector will take into consideration a variety of factors, including the animal's age, health, and fitness for breeding.

A few commenters pointed out that any definition of ''breeding female'' would likely exclude animals that should fall within its scope and include animals that should not. They stated that the determination that an animal is a breeding female should ultimately be at an inspector's discretion. Other

[7] The documents cited were: (1) Parvene Farhoody and M. Christine Zink. *Behavioral and Physical Effects of Spaying and Neutering Domestic Dogs (Canis familiaris).* (2) Laura J. Sanborn, M.S. *Health Risks and Benefits Associated with Spay/Neuter in Dogs.*

commenters agreed that the determination must be the inspector's, but stated that APHIS should provide certain considerations that factor into this determination, at the risk of otherwise appearing arbitrary and capricious. One commenter stated that these considerations should include frequency of estrous cycles and the age at which the female could bear a litter. Two other commenters stated that tests, such as the OFA, Penn Hip, thyroid, and recognized breed-related tests, should factor into our determination regarding whether an animal has the capacity to breed.

It is ultimately an APHIS inspector's responsibility to decide whether an animal is a breeding female, and this decision must rely on a variety of factors. Inspectors currently rely on factors such as the animal's age, health, and fitness for breeding in deciding whether an animal is a breeding female. Moreover, in determining the animal's health status, inspectors may have recourse to recognized breed-related tests.

However, inspectors do not rely on the frequency of estrous cycles, which are variable and influenced by many factors.

One commenter stated that, since the decision that an animal is a breeding female is ultimately an inspector's, this exemption presupposes that all breeding females will be inspected by APHIS, which the commenter stated cannot be done.

APHIS does not intend to conduct inspections of all potentially regulated entities and their breeding females all at once. We discuss this matter in greater detail below.

Another commenter asked how APHIS is able to determine that a female dog has been spayed based on visual inspection.

APHIS inspectors rely on a variety of means to determine whether a female has been spayed. One means is visual inspection. Other options include reviewing veterinary records or other documentary evidence, such as sales receipts.

Some commenters stated that certain types of animals should not be considered breeding females for purposes of determining the total number of breeding females on their premises. One commenter stated that purebred dogs and show dogs should not count towards the total number, since the medical care and husbandry provided to such animals exceed the standards set forth in the regulations. Similarly, other commenters stated that, if the breeder belongs to a registry or breeding organization for a particular breed, breeding females of that breed that reside on his or her premises should not be considered breeding females for purposes of this exemption, since the codes of ethics and guidance for those registries and organizations already provide adequate assurances of animal welfare.

We are making no changes in response to these comments. Sexually mature and intact show dogs can always be used as breeding females at some point after they are no longer shown. Additionally, breed registries vary widely in how they oversee and inspect breeders within their organizations.

Several commenters suggested that sexually intact working dogs should not count towards the total number of breeding females.

If sellers of such dogs also sell dogs at retail for pets, any female dogs bred to produce puppies for sale would be counted as breeding females.

A cat breeder stated that, because only 2 percent of owned cats are obtained from pedigree breeders, breeding female cats should not count towards the number of total breeding females on the premises for purposes of the regulations.

As we mentioned above, this exemption is intended for certain breeders who maintain few enough breeding females on their premises that we consider them capable of providing adequate care and oversight for all animals on their premises. We have determined that this threshold is four breeding female dogs, cats, and/or small exotic or wild mammals. We have no evidence suggesting that cats should not factor into the threshold, nor do we consider the percentage of cats obtained from pedigree breeders to be relevant to determining the threshold.

One commenter stated that she intended to have several of her dogs spayed in order to qualify for the exemption, but would need some time in order to accomplish this. She asked how much time APHIS would afford breeders to spay their dogs following publication of a final rule before we began enforcing the ''four breeding female'' limit.

The revisions to the exemption will be effective when this final rule becomes effective.

A number of commenters stated that all breeders with sexually intact females on their premises should have to be licensed, and the exemption should therefore be removed from the regulations.

We conclude from our experience with currently regulated entities that breeders who maintain four or fewer breeding females can generally be considered low-risk facilities with regard to animal welfare.

Several commenters stated that purebred breeders and breeders of ''custom'' mixed breeds (e.g., cockapoos) should be required to be licensed, regardless of the number of breeding females on their premises, stating that these breeders were most likely to overbreed their animals.

Our data suggests that it is the total number of breeding female dogs maintained on the premises, rather than the breed of dogs maintained, that is the primary determinant in whether the premises is a low-risk facility.

Several commenters suggested that we consider the number of puppies sold per year instead of counting the breeding females at a premises. Most of the commenters suggested that this number should be 50 puppies produced per year; a few commenters suggested adjusting this number up or down, depending on the breed. Two commenters suggested that the exemption be based on number of litters and puppies sold; one of the commenters suggested setting the exemption at 10 litters and 50 puppies, the other at 15 and 50. One commenter suggested, instead of the proposed amendments to exemptions in § 2.1(a)(3)(iii) in the proposed rule, that we amend (a)(3)(iv) to read as follows: ''Any person who sells fewer than 50 dogs and/or cats per year, which were born and raised on the premises of a co-owner of the breeding female or at a facility owned by a licensed veterinarian in the jurisdiction either as pets or for research, teaching or testing purposes and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 50 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others, where they collectively sell 50 or more dogs and/or cats from a single property. The sale of any dog or cat not born and raised on the premises for research purposes requires a license.'' The commenter stated that this would effectively return the number of regulated entities to that of the time period before the Internet.

As we explained in the proposed rule, we have enforceability concerns regarding an exemption based on number of puppies sold: We cannot require individuals who are exempt from licensing to keep records regarding animal sales, but would need such recordkeeping in order to enforce the exemption. No commenters suggested that such recordkeeping was unnecessary for enforcement purposes, nor did commenters suggest alternate

means of obtaining the necessary information.

*Breeding Females and Offspring:* ''And who sells *only the offspring* of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises. . . .''

Several commenters stated that it is common for a breeder to receive a puppy as compensation for lending an animal out for stud services and then sell that puppy at a later date. The commenters pointed out that, in order to qualify for the exemption in § 2.1(a)(3)(iii), these breeders could not resell such puppies, and suggested that, if breeders stopped engaging in this practice in order to qualify for the exemption, this would ultimately impact genetic diversity in several breeds.

While such individuals cannot qualify for the exemption in § 2.1(a)(3)(iii), this does not necessarily mean that they need to stop engaging in this practice in order to be exempt from licensing. The stud services may constitute brokering or breeding purposes and we would need more information to determine the purpose for licensing purposes. They may be exempt from licensing under another exemption in the AWA regulations.

Several commenters stated that breeders often sell a breeding female to individuals who are aspiring breeders or who wish to add new bloodlines to their breeding program; one commenter stated that the occasional addition of such bloodlines is necessary in order to preserve genetic diversity in his breed. Other commenters stated that they occasionally sold ''retired'' breeding females to friends or acquaintances as pets. A number of commenters suggested that we amend the paragraph so that both the breeding females and their offspring may be sold.

We are not amending the paragraph in the manner suggested by the commenter. The paragraph pertains to a distinct category of breeders that APHIS has evaluated and determined to be low risk for noncompliance with the AWA. The amendments requested by the commenters would expand the paragraph's scope to include breeders that APHIS has not evaluated.

We note, however, that the commenters who stated that they sold breeding females as pets did not specify where the breeding females were born and raised. The exemption allowance on the number of breeding females only applies when dogs are sold that are born and raised on the seller's premises. If the breeding females were not born and raised on the premises, the seller does not qualify for this exemption regardless of the number of breeding females they maintain, but may still be exempt from licensing as a retail pet store depending on the manner in which they sell the animals (i.e., face-to-face). Breeders who sell breeding females for purposes other than the six uses listed in the definition of *dealer* may also be exempt under this rule.

Several commenters stated that the requirement that breeders can only sell the offspring of dogs, cats, and other small mammals born and raised on their premises for pets or exhibition is vague or unclear. One commenter, a dog breeding club, asked APHIS to provide a clear statement of the meaning of ''born and raised on his or her premises.'' Several commenters were uncertain how to apply the requirement for puppies or other animals that were born at a veterinarian's office, off premises, and then returned with their mother to the premises.

''Born and raised on his or her premises'' means that a breeding female gives birth on the premises and that the offspring are raised on that premises. When enforcing this requirement, we consider the ownership of the animal and the ability to maintain control over the animal. This would include medical contingencies that may require a female animal to deliver its offspring at a veterinarian's office. In such cases, APHIS may request additional information to determine where the animals are born and raised.

*Breeding Females and Offspring:* ''This exemption does not apply . . . to any person *acting in concert with others* where they collectively maintain a total of more than three breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership. . . .''

Several commenters stated that co-ownership is common in the hobby and show dog breeding community. Many small-scale residential breeders co-own animals with people who live in other locations. One commenter, a dog breeding club, asked APHIS to explain the meaning of ''acting in concert with'' and whether the term applies to co-ownership of breeding females. One commenter noted that when puppies are raised for show or breeding, the breeder will sometimes co-own a puppy with its new owner and mentor the owner on how to breed or show the dog. Another commenter noted that when a show dog is sold, breeding rights for the dog are often part of the sale, so that an animal that is owned by the buyer remains on the breeder's property until it produces a litter.

One commenter noted that to deprive retail breeders of a feasible exemption for co-ownership would not only significantly affect for-profit breeding operations, but would disrupt and change longstanding, useful practices among pet fanciers that actually ensure welfare through educating newcomers and sharing expertise in the long-term interest of better breeding. The commenter added that the proposed rule would leave fanciers and all retail-sale breeders the options of selling only to on-premises buyers or limiting themselves to four breeding females.

One commenter asked whether, if a breeder has multiple premises but has no more than four breeding females at any one location, he or she would be required to be licensed. Another commenter pointed out that, if this exemption applies to each premises rather than to each breeder, regardless of the number of premises on which the breeding females are maintained, this could create a significant loophole that would allow puppy mills and other mass-producers to retain an exemption from licensing by distributing their breeding females among multiple premises. Several of these commenters asked us to specify in the final rule that co-ownership does not constitute acting in concert with another person to maintain a breeding female.

We acknowledge that co-ownership of breeding females is a standard practice among small-scale residential breeders. Provided that no more than four breeding females are maintained on his or her premises, these individuals would qualify for the exemption in § 2.1(a)(3)(iii).

*Comments on Removing § 2.1(a)(3)(vii)*

As noted above, we proposed to remove § 2.1(a)(3)(vii), which exempted from licensing any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer's own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., ''dog and cat fanciers''), on the grounds that it was inconsistent with our proposed revision to the definition of *retail pet store.*

One commenter stated that we should state in the final rule that removing the exemption in § 2.1(a)(3)(vii) will subject dog and cat fanciers to licensing and the possibility of inspections, but will not force them to comply with the standards in 9 CFR part 3. Several commenters suggested that we require dog and cat fanciers to follow the standards in part 3 that pertain to grouping, exercise, feeding, watering, and cleaning, but that we exempt them from the facility standards of that part, which are

impracticable for breeders who raise animals in their homes. Specifically, a number of commenters cited the standards in § 3.2 regarding impervious materials and § 3.6 regarding whelping areas as being cost-prohibitive for most residential breeders. Several of these commenters suggested that we amend part 3 in the final rule to establish alternate, performance-based standards for dog and cat fanciers and other small-scale residential breeders.

We are making no changes in response to these comments. The comments were predicated on an assumption that it will be cost-prohibitive for most residential breeders who are regulated as a result of this rule to meet the standards in part 3; we do not consider that to be the case. We discuss this at greater length in the economic analysis that accompanies this final rule.

One commenter suggested that we should delay the effective date for removing the exemption until we consult with residential breeders and explain what structural modifications they will need to make to their residences so that they comply with the regulations in part 3.

We are not delaying the effective date. As we note in the economic analysis, many residential breeders will continue to be exempt from the regulations, and as noted by several commenters, many who are not exempt are already operating in a manner that is consistent with the AWA. Accordingly, they will likely need to make only minor structural changes to their facilities to be in compliance with AWA standards.

One commenter suggested that we ''grandfather in'' all existing residential breeders as retail pet stores, and require licensing only for new residential breeders.

We are making no change in response to this comment. The commenter's suggestion would privilege existing breeders over new breeders.

A number of commenters stated that, if APHIS needed to require them to be regulated and licensed in order to ensure animal welfare, APHIS should take measures to ensure that the impact of such licensing has as minimal an effect on such breeders as possible. One commenter suggested that we limit the licensing fee for purebred dog and cat fanciers and other small-scale breeders to $10 yearly.

We expect that many small-scale breeders will remain exempt from licensing and will therefore not need to pay a licensing fee. However, we note in the economic analysis prepared for this rule that the costs of licensing are likely to be lower than most breeders figure them to be.

Finally, a commenter stated that the rollout of the final rule should be accompanied by a supporting document or educational campaign for small-scale residential dog and cat breeders in best practices for breeding and care. The commenter said that many breeders will want to comply with the regulations, but, because of unfamiliarity with the AWA, will need instruction.

APHIS already provides such education as part of its prelicensing process and existing stakeholder outreach.

*Requests for Additional Exemptions*

A few commenters stated that we needed to add additional exemptions to paragraph (a)(3) of § 2.1.

Many commenters stated that we should amend the regulations to specify that animal rescue groups should be exempt from licensing because such groups have business models that are vastly different from those of retail dealers. They pointed out that the goal of such groups is to preserve animal welfare rather than to breed animals for profit. A few commenters stated that we should make a distinction between non-profit and for-profit rescue groups, and exempt the former from licensing.

On the other hand, several commenters stated that rescue groups should not be exempt from licensing solely because of their mission. Some of these commenters pointed out that both profit and non-profit rescue groups often request substantial adoption fees to recoup the costs of maintaining the group. Several other commenters acknowledged the good intentions of rescue groups, but stated that many groups overreach and end up overcrowded with rescued animals. The commenters also pointed out that many rescues rely on volunteers to provide care for the animals and that reliance on volunteer efforts could result in gaps or significant disparities in the care provided.

Some commenters suggested alternatives. One commenter suggested that we require rescue groups to be licensed, but that we waive licensing fees for such groups. Another commenter suggested exempting them from the facility standards of part 3. A third commenter suggested that we amend the regulations so that all ''Class A'' breeders have to enter into a trust fund agreement with APHIS at licensing and renewal, with the money in the agreement dedicated to licensing for non-profit rescue groups and other non-profits. Another commenter suggested that we define *non-profit organization* in the final rule, include rescue groups within the definition, and exempt all non-profit organizations from licensing.

As we noted earlier, private rescues and shelters tend to operate under a business model in which animals available for sale or adoption are physically present at a predetermined location where the public is encouraged to meet and inspect the animals; this business model is consistent with what we consider a retail pet store to be, and fits within the scope of our definition of a *retail pet store.* As a result, most private rescues and shelters have historically been exempted under the retail pet store exemption and will continue to be exempted as long as they meet the amended definition of *retail pet store.*

However, private rescues or shelters that are operating in a manner that requires them to be licensed as dealers must be treated in a manner that is consistent with our regulation of all other licensed dealers. This includes paying licensing fees and adhering to the standards in part 3 of the AWA regulations.

*Oversight and Enforcement*

A number of commenters believed that we had greatly underestimated the number of newly regulated entities in our initial regulatory impact assessment and questioned whether we had sufficient personnel to enforce the provisions of the proposed rule. A number of commenters stated that, before conducting all the inspections necessary to enforce the proposed rule, APHIS would have to hire additional inspectors. One commenter stated that our ability to enforce the proposed rule is hampered by our restrictive definition of *inspector* in § 1.1, and that we should expand the definition to include State employees and third parties authorized by APHIS. Other commenters noted that APHIS had provided no indication of how it will fund expenditures for additional personnel.

On the other hand, a commenter supporting the proposed rule commented that APHIS is capable of handling the enforcement responsibility of the proposed rule without hiring large numbers of additional personnel. The commenter acknowledged that the number of additional facilities that would be subject to licensing under this rule would be difficult to determine. They noted, however, that even if the new regulation doubled the number of operations subject to USDA regulation, the inspection burden would merely return to approximately the level that was handled by USDA in 2008.

APHIS' plan is to incorporate newly affected entities into our existing regulatory structure using a phased implementation for conducting initial prelicensing inspections and compliance inspections. Factors we would consider when determining when and how frequently such inspections would take place include, but are not limited to: (1) Whether an entity has applied for a USDA license; (2) whether an entity is already subject to some degree of State, county, or local oversight, and the nature of that oversight; and (3) whether an entity is the subject of a legitimate complaint and the nature or severity of that complaint. We will conduct periodic compliance inspections based on a risk-based inspection system that calculates the level of risk of noncompliance.

Because of this phased implementation, we do not consider it necessary to amend the definition of *inspector* to allow APHIS to use non-APHIS employees to serve as inspectors.

A number of commenters asked how we would identify newly regulated entities. One commenter suggested that we conduct spot checks of advertised breeders to confirm that they are either licensed or qualify for an exemption. Several commenters suggested that we develop a dealer registry and require all sellers or breeders to submit contact information, along with the appropriate licensing fee or a written statement explaining why they were exempt from licensing. However, a commenter warned that adding newly regulated entities to our database will take a sizable investment of Animal Care workforce hours and asked if APHIS considered the costs of doing so.

We will identify newly regulated entities using our current methods, which include reviewing marketing or promotional material in the public domain, self-identification, and complaints. Implementation of this rule will take into consideration the workforce hours that it will take to add newly regulated entities to our database.

A commenter requested that we investigate unlicensed ''puppy brokers'' who transport and sell puppies for commercial breeders who raise puppies in rural, remote areas. The commenter stated that such brokers are transporting puppies to more populated areas so that they can be sold out of private homes, for which the residents receive a percentage of the profit.

APHIS investigates all credible reports we receive of unlicensed activities involving sales of covered pets.

One commenter suggested that APHIS require breeders to maintain a record of whenever they move interstate and to allow spot audits of those records to determine which breeders to inspect. Another commenter stated that breeders should have to report any land or storage spaces they maintain and go through a background check and provide references in order to maintain a license.

APHIS does not require exempted breeders to report such information cited by the commenters. However, we are authorized to inspect the records of licensed entities.

Several commenters supporting the rule asked why pet stores are not subject to licensing and inspection under the regulations. Some of those commenters expressed concern about inhumane conditions in pet stores and recommended that they be subject to monitoring and inspection. Some commenters stated that pet stores should be prohibited from selling puppies and adult dogs, and to lesser extent cats, as a means to reduce the demand for animals from commercial breeders.

Under the AWA, retail pet stores are exempt from regulation.

Another commenter stated that all locations in which pet animals are sold should be required to have a licensee on-site at all times, and that this licensee should have all veterinary records of the animals on the premises available for review at all times; the records maintained by this licensee would facilitate traceback in the event of possible animal welfare abuses.

Under the AWA, APHIS already requires licensed breeders to maintain such records, but we only require that a licensee be available to present records during business hours. Breeders exempted from licensing have no such recordkeeping requirements.

One commenter suggested that APHIS pilot a voluntary inspection program for newly regulated dealers, in which dealers would agree to be inspected in exchange for assurances from APHIS that violations discovered during this inspection would not result in fines or penalties. Other dealers would be inspected based on complaints of abuse, and would not be exempt from penalties.

We have no plans to institute a voluntary inspection program. APHIS will provide information upon request to persons to help them assess whether they need to apply for licensing and to offer guidance on complying with AWA regulations.

A number of commenters suggested that the need for inspections would be greatly reduced if APHIS increased penalties for dealers who violate existing AWA regulations. One commenter pointed out that the 2010 USDA OIG audit [8] (referred to below as the OIG audit) referenced in the proposed rule found that few, if any, first-time violators of the AWA were subject to an enforcement action, even for those found to be in direct violation of the Act. The commenter suggested that penalizing all first-time offenders would decrease recidivism, would further animal welfare within the United States, and could obviate the need for the proposed rule.

We continue to review and improve the manner in which we assess penalties, consistent with our response to the OIG audit. However, we continue to maintain that this rulemaking is necessary in order to ensure that our definition of *retail pet store* is consistent with the AWA.

We invited comments on an alternative regulatory scheme presented in the proposed rule that would minimize APHIS oversight of entities already subject to State, local, or industry oversight. A number of commenters, including several State agricultural officials, noted that many States already require licensing of commercial dog and cat breeders. The commenters stated that Federal oversight of breeders would likely be duplicative, contradictory, and confusing. Several commenters stated that APHIS should withdraw the rule in favor of establishing a cooperative Federal-State program that relies primarily on State officials to provide oversight of dealers and breeders, with APHIS providing guidance and coordination at the Federal level. However, a number of commenters disagreed, noting that State regulations are in many cases insufficient to provide for the welfare of animals sold as pets. Many of these commenters pointed out that withdrawing the proposed rule and deferring to States would simply maintain the status quo, and that the OIG audit clearly indicates that the status quo does not adequately provide for animal welfare. For this reason, a number of the commenters stated that State animal welfare officials should not be used as inspectors for purposes of enforcing APHIS regulations.

A few breeders stated that, while they were not regulated stringently at the State level, they were subject to very stringent city or local regulations, and

[8] To view this audit, go to *http://www.usda.gov/oig/webdocs/33002-4-SF.pdf.* The major objectives of the OIG audit were to examine Animal Care's enforcement process against dealers that violated the AWA and to review the impact of recent changes that APHIS made to the penalty assessment process.

that these regulations obviated the need for further Federal regulation. The breeders suggested a locality-by-locality review of existing regulations prior to issuance of a Federal rule, and also encouraged us to claim selective preemption.

As we noted in the proposed rule, to our knowledge 27 States and the District of Columbia have enacted laws that establish some form of humane welfare standards for animals kept at pet stores and sold at retail. We have provided many of these States with guidance on developing and enforcing their animal welfare regulations. But while these States and several municipalities have such laws, none actually address all categories of welfare required under the AWA, including veterinary care, food and water, proper sanitation, and housing. As a consequence, Federal oversight is necessary to ensure that AWA regulations are consistently applied across all States.

We should add, however, that if a State has issued and is enforcing several of its regulations under a category of welfare required under the AWA, we can adjust our own inspection frequency and procedures in that category in ways that will reduce the burden of duplicative regulations on breeders in that State.

In the proposed rule, we also invited comments from the public regarding the idea of an exemption based on oversight from private organizations. Many commenters stated that industry-run programs provide adequate oversight of certain breeders and dealers, and that licensing and oversight by APHIS is therefore unnecessary for these entities. One commenter, a national dog breeder and fancier organization, noted that they maintain a purebred dog registry, that members of that registry are subject to routine inspections, and that ongoing enrollment in the registry requires continued adherence to a comprehensive care and conditions policy. Several commenters noted that they belonged to the registry or a similar breed-specific registry, and that inclusion on the registries is in fact dependent on agreeing to regular inspections, recordkeeping requirements, and other welfare safeguards.

However, a number of commenters disagreed, stating that private organizations are not always capable of adequate oversight of breeders. One commenter conducted a study on oversight by pet registry organizations and concluded that self-regulation attempts have been largely ineffective. They also noted that registry organizations only monitor breeders of purebred dogs, while mixed-breed and ''designer'' dogs such as yorkie-poos, puggles, and labradoodles, which are among the most popular varieties sold online, appear to have no self-policing registries.

We are making no changes in response to the comments. While some breed registries and other organizations maintain programs for oversight of breeders, few, if any, have requirements that address all categories of animal welfare required under the AWA. Furthermore, as the one commenter noted, many mixed-breed dog breeders appear to have no self-policing registries.

Other commenters pointed out that a number of States have puppy ''lemon laws'' that protect consumers from the financial losses incurred when buying a sick dog, and stated that these consumer protection laws have the effect of securing animal welfare through market forces. Similarly, a few other commenters pointed out that, while not all States have puppy ''lemon laws,'' all States have laws that protect consumers from fraud and deceptive marketing practices, and that these laws could be enforced at the State level in a manner that results in State inspections of dealers and breeders and imposes civil and criminal penalties for those dealers and breeders who do not provide adequate care for their animals. Several of these commenters suggested that APHIS conduct a State-by-State review of animal welfare and consumer protection laws prior to issuing a final rule, and should claim preemption of State laws only for those States that have less stringent standards than those that dealers would have to adhere to under the provisions of the proposed rule. On the other hand, a few commenters stated that consumer protection laws do not provide assurances that animals are bred and raised humanely, but solely provide remedies for consumers when they purchase animals that turn out to be unhealthy or are otherwise not what they were portrayed to be.

We are making no changes in response to the comments. ''Lemon laws'' protect the economic interests of the buyer and do not meet the goals of the AWA.

Finally, one commenter suggested that APHIS petition Congress to amend the AWA so that private entities could bring suit against breeders, brokers, and handlers for AWA violations. The commenter stated that any damages awarded in a lawsuit could far exceed the penalties under the AWA, and would serve as a strong incentive to follow the regulations. However, a few commenters disagreed, pointing out that APHIS has limited ability to petition Congress to enact legislation.

APHIS does not consider it necessary to amend the AWA in order to meet the request of the commenter.

*Constitutionality and Legal Authority*

Several commenters expressed concerns about the constitutionality of the proposed rule. One commenter stated that Congress is not permitted to delegate authority to Agencies to issue rules with the force of law, and that the rule therefore violates Section 1 of the Constitution.

Congress is permitted to delegate authority to Agencies to issue rules.

Another commenter stated that, because APHIS has no evidence that all individuals engaged in Internet or sight unseen sales are guilty of violations of the AWA, subjecting those who are not guilty to licensing amounts to a tax. The commenter pointed out that, as an Agency of the Executive Branch, APHIS has no authority under the Constitution to impose or collect taxes.

The AWA specifically authorizes the assessment of licensing fees, which do not constitute a tax.

A number of commenters stated that any change to the definition of *retail pet store* that subjects their homes to possible unannounced government inspections for AWA compliance violates their Fourth Amendment rights against unlawful search and seizure.

Section 2146 of the AWA explicitly authorizes inspections of licensees to determine compliance with the AWA. However, such inspections are limited to only those areas that impact the well-being of the animals, such as areas where food and medicine for the animals are stored.

One commenter stated that most animals sold as pets are born and moved within State boundaries. The commenter suggested that, since interstate commerce does not occur in those instances, attending to the welfare of those animals is outside of Federal jurisdiction under the Tenth Amendment and solely a State prerogative.

In issuing the AWA, Congress found that such intrastate commerce often substantially affects interstate commerce.

One commenter stated that the AWA does not address privately owned property, nor does it provide that a retail business must permit customers to personally visit the seller's property to be considered a retail pet store. The commenter also stated that there is no assumption in the AWA that animal welfare entails customers visiting a

seller's property and monitoring the property for compliance with the AWA.

The AWA does not require retail pet sellers to allow customers to enter their property. A seller exempted as a retail pet store can indicate a place of business separate from his or her premises at which to sell pet animals at retail.

One commenter stated that the rule essentially restricts the ability to advertise the availability of animals for sale by rendering it difficult to use the Internet to engage in such sales, and that APHIS had failed to provide a compelling reason for such restrictions. The commenter stated that using the Internet to sell the animal constitutes commercial speech and concluded that the rule violated the First Amendment right to free speech.

The rule does not restrict the use of the Internet as a marketing or communications tool. Rather, it revises the definition of *retail pet store* to ensure that it stays consistent with the AWA.

A few commenters noted that that the 2010 OIG audit mentioned in the proposed rule focused on large-scale, AWA-licensed problematic dealers and not on small-scale breeders, and that APHIS inappropriately extrapolated from the report that breeders of all sizes should be under Federal oversight for the purpose of animal welfare. One commenter noted that the USDA OIG's finding regarding remote, Internet sales (Finding 5) was that ''some large breeders circumvented [the] AWA by selling animals over the Internet,'' and stated that the OIG audit had broadly referred to these large-scale breeders as ''Internet breeders'' later in the report for the sake of brevity. The commenter stated that, in the proposed rule, APHIS had construed the term ''Internet breeder'' in an unqualified sense that is at odds with the meaning of the term in the OIG audit.

In the proposed rule, we used the term ''Internet breeders'' only for the purpose of passing along factual information regarding the OIG audit's findings and were not attempting to assign a specialized meaning to the term.

The same commenter stated that the OIG audit had heavily redacted statements made by former Secretary of Agriculture Ann Veneman in *DDAL v. Veneman* in order to suggest that Internet sellers need to be licensed. The commenter provided Secretary Veneman's full transcript, which stated that oversight is necessary but is already being exercised by breed and registry organizations. The commenter concluded that APHIS had either taken these statements in the report out of context or relied on statements that were taken out of context in order to justify the proposed rule, and that this was tantamount to legal dishonesty.

APHIS drafted the proposed rule because the term *retail pet store* was being understood and applied in a manner that was inconsistent with the AWA, in order to ensure that the definition of *retail pet store* in our regulations was consistent with the AWA.

A commenter noted that the proposed rule makes references and comparisons to the Puppy Uniform Protection and Safety (PUPS) Act. The commenter stated that APHIS had assumed that the bill represents the will of Congress, and pointed out that the bill has not been signed into law and should not be considered to have the force of law for the sake of issuing regulations.

The proposed rule made no statements suggesting the PUPS Act had the force of law.

Two commenters stated that APHIS had failed to comply with the National Environmental Policy Act (NEPA) in issuing the proposed rule. The first commenter stated that we had failed to examine the aggregate effects on the environment that may occur if many breeders throughout the United States have to significantly alter their residences in order to meet AWA standards. In a similar manner, the other commenter stated that we had failed to consider the environmental impacts on local communities that may occur because of the proposed rule.

We followed NEPA and determined the proposed rule was categorically exempt from preparation of NEPA documentation because it outlined routine measures. The commenters who stated that the rule would have such environmental effects believed that most residential breeders would have to make significant structural changes to their homes in order to comply with 9 CFR part 3; for reasons specified above and in the economic analysis that accompanies this rule, we do not consider that to be the case.

Similarly, a few commenters stated that APHIS failed to fulfill a statutory duty to ensure full compliance with the Small Business Act, including a determination of impact under zoning laws presented by federalizing a hobby and converting small-scale breeders to home-based businesses, and submitting certification to the Small Business Administration (SBA) with a detailed statement on the impact of the proposed rule on the affected ''Small Businesses.''

APHIS submitted the proposed rule and its accompanying regulatory impact analysis, which included an initial regulatory flexibility analysis produced in accordance with the Regulatory Flexibility Act, to SBA prior to the publication of the proposed rule.

A number of commenters stated that the factsheet [9] contained several responses that contradicted the provisions of the proposed rule. Many of these commenters stated that the average person would not interpret the ''physical entry'' provision of the definition of *retail pet store* to allow face to face off-site transactions to occur. One of these commenters also asserted that the factsheet appears to grant a blanket exemption from licensing to all rescue groups, and that this exemption was neither explicit nor inferred within the proposed rule.

In a similar manner, a number of commenters stated that the factsheet interprets the facility construction standards of 9 CFR part 3 in a performance-based manner that the regulations themselves, which are highly prescriptive, do not support. Several commenters concluded that the factsheet materially contradicts both existing regulations and the provisions of the proposed rule. The commenters added that APHIS had made no attempt, in issuing the factsheet, to specify that it is a ''pararegulatory'' document which, by definition, cannot have the force of law. The commenters further stated that the factsheet provides evidence that APHIS' interpretation of the proposed rule will be arbitrary and capricious. For these reasons, the commenters stated that the proposed rule cannot be finalized and must be withdrawn.

The factsheet was simply intended to provide additional explanation about the provisions of the proposed rule for the public. It did not contradict the provisions of the proposed rule.

Several commenters cited *DDAL* v. *Veneman* as supporting an exemption from licensing for all small-scale residential breeders. The commenters asserted that APHIS had stated in *DDAL* v. *Veneman* that hobby breeders do not need to be licensed.

As we state elsewhere in this document, we do not consider the term ''hobby breeder'' to be equivalent to a small-scale residential breeder, nor was it used in such a manner in *DDAL* v. *Veneman*.

One commenter stated that Congress has amended the AWA several times since its promulgation, but never sought to define ''retail pet store'' or otherwise restrict certain entities from considering themselves to be retail pet stores.

[9] See footnote 4.

It is our contention that our proposed definition of the term *retail pet store* is consistent with the AWA.

One commenter stated that the rule had not been issued in accordance with Executive Order 13563. The commenter stated that APHIS failed to provide the scientific and technical basis for the rule and allow for a critique and evaluation of these bases. The commenter stated that it would be reasonable for someone to infer that the proposed rule was based on anecdotal evidence. The commenter also stated that this failure to provide the technical and scientific basis for the rule, and to apparently rely on anecdotal evidence, was in violation of Section (2)(b) of the Executive Order.

Executive Order 13563 only requires regulatory Agencies such as APHIS to state the scientific and technical basis for a rule if that basis exists. The proposed rule was based on our determination that certain parties were construing the definition of *retail pet store* in the AWA regulations in a manner inconsistent with the AWA.

The commenter further stated that, by failing to engage in dialog with those who would be potentially regulated by the rule, we failed to meet the objectives of Section (2)(c) of the Executive Order, which suggests that, where feasible and appropriate, Agencies should seek the views of entities likely to be affected. The commenter stated that he was not aware that we had engaged in any meaningful dialog with potentially regulated entities prior to issuance of the rule, and certainly not in a manner proportionate to the scope of the rule.

APHIS engaged the potentially regulated industries at length before issuing the proposed rule. Our outreach activities included personal communications by telephone and in person.

*Other Comments*

We received many comments on subjects that are outside the scope of this rulemaking. Several of the comments also requested changes that are also outside the scope of the AWA, among them a ban on the sale of pets, mandatory spaying or neutering and microchipping of all pets sold at retail, regulation of the Internet as a marketing tool for pets, licensing of individuals who buy animals as pets and imposing minimum requirements on those individuals, and titling for animals used in agility competitions.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

**Executive Orders 12866 and 13563 and Regulatory Flexibility Act**

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 also emphasizes the need for retrospective analysis of rulemaking. Accordingly, USDA will carefully monitor the implementation of this rule and will propose any changes that may be necessary to both protect the welfare of covered animals and to minimize undue burdens on the public. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 2 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This rule will primarily affect dog breeders who maintain more than four breeding females at their facilities, sell the offspring as pets, and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of those animals after purchase. The rule may also affect some cat and rabbit breeders. While the scope of this rule applies to certain other animals, based on our experience, most retailers of animals other than dogs will meet the amended definition of *retail pet store* and continue to be exempt from regulation.

The benefits of this rule justify its costs. More pet animals sold at retail will be brought under the protection of the AWA and monitored for their health and humane treatment. Improved animal welfare will benefit buyers of pets and the general public in various ways. Monitoring the health and humane treatment of pet animals should reduce the number of pets receiving inadequate care and reduces the possibility of sick or injured pet animals being purchased sight unseen. When a buyer receives a sick or abused pet animal, sight unseen, the responsibility for correcting inadequate care has been effectively transferred from the seller to the buyer without the buyer's knowledge or consent. If that buyer is unable or unwilling to provide the pet animal with needed care, a shelter may become the default caregiver for that animal. A reduction in the number of sick or abused pet animals received by buyers may reduce the number of such animals sent to shelters. Public shelters provide for the care of these unwanted pet animals, usually at local taxpayer expense. Also, as noted by several commenters, neglected or abused pet animals confiscated from substandard breeding operations are often sent to shelters to provide for their care. Newly regulated commercial breeders working to comply with AWA regulations will increase the health and well-being of the pet animals under their care.

In addition, when breeding operations for which regulatory oversight is insufficient fail to adequately provide veterinary care for their animals, the buyer may subsequently incur greater costs associated with providing that care because needed care has been delayed. The rule will benefit buyers of animals by providing regulatory oversight to ensure that breeders provide necessary veterinary care.

Animals can carry zoonotic diseases (diseases that can be transmitted between, or are shared by animals and humans). The possibility of an animal carrying a zoonotic disease is reduced with adequate veterinary care, including vaccinations. To the extent that improved oversight reduces the likelihood of pet-to-human transmission of zoonotic diseases such as rabies, the public as a whole will benefit from the rule. The rule will also address the competitive disadvantage of retail breeders who incur certain costs by adhering to the AWA standards regulations while retail breeders who do not operate their facilities according to AWA standards may bear lower costs.

There is a great deal of uncertainty surrounding the number of facilities that will be affected by this rule, as we acknowledged in the proposed rule, and as evidenced in the public comments. There are hundreds of distinct dog breeds, and correspondingly large numbers of dog breeders in the United States. Breeders with an online presence are those most likely to be selling the offspring sight unseen and thus are more likely to be affected by this rule. We estimate that there could be between 8,400 and 15,000 such dog breeders in

the United States. This estimate is based on the assumption that for every five breeders identified by APHIS in online breeder registries there is one other breeder that has not been identified who also uses remote marketing methods.

However, this rule will only affect those dog breeders who sell dogs as pets, not for hunting, security, breeding, or other purposes; who maintain more than four breeding females on their property; and whose buyers are not all physically present to observe the animals prior to purchase and/or to take custody of the animals after purchase. When these conditions are taken into account, we estimate that there are between 2,600 and 4,640 dog breeders that may be affected by this rule. The following table highlights the criteria used for identifying dog breeders potentially affected by this rule and the process used to calculate the number of such breeders:

POTENTIALLY AFFECTED DOG BREEDER CALCULATIONS—A BREEDER MUST MEET ALL CRITERIA BEFORE LICENSING IS REQUIRED

| Row | Category | Criteria for inclusion [2] | Calculation | Range |
|---|---|---|---|---|
| (a) ..... | Number of Listed Breeders [1] ..... | All listed ..... | ..... | 7,000 to 12,500. |
| (b) ..... | Inclusion of breeders not listed ..... | For every five breeders listed, we assume one more not listed who also has a remote marketing presence. | (a) * 1.2 ..... | 8,400 to 15,000. |
| (c) ..... | Breeder sells pets ..... | 75% of breeders sell dogs as pets, i.e., not for hunting, security, breeding, etc. | (b) * 0.75 ..... | 6,300 to 11,250. |
| (d) ..... | AND Breeder has more than 4 breeding females. | 55% of breeders have more than 4 breeding females | (c) * 0.55 ..... | 3,465 to 6,188. |
| (e) ..... | AND Buyer purchases dog sight unseen. | 75% of breeders sell one or more dogs without the purchaser physically observing the dog before purchase and/or taking custody. | (d) * 0.75 ..... | 2,599 to 4,641. |

[1] Two multi-breed breeder listings: *www.puppysites.com* and *www.dogbreederregistry.com,* and individual breed breeder listings for 160 individual breeds.

[2] Expert judgment based on online breeder registries, public comments, and APHIS' knowledge of industry practices.

The rule will also affect cat breeders who maintain more than four breeding females at their facilities and sell the offspring as pets, sight unseen. Fewer than 2 percent of cats in the United States are purebred and raised by breeders. We estimate that about 325 cat breeders may be affected by this rule.

The rule will also affect rabbit breeders who sell the offspring as pets, sight unseen, which is not common. Rabbits are usually sold at auctions, exhibits, and fairs where the buyers are physically present. We estimate that no more than 75 rabbitries may be affected by this rule.

Newly regulated breeders will be subject to licensing, animal identification, and recordkeeping requirements. In addition, affected entities will be subject to standards for facilities and operations, animal health and husbandry, and transportation. One set of costs attributable to the rule will be incurred annually by all newly regulated entities, such as licensing fees. Other costs will depend on the manner and extent to which entities are not complying with the basic standards of the AWA. Some of these costs will be one-time costs in the first year, such as providing adequate shelter; others will recur yearly, such as providing adequate veterinary care.

The cost of a license for breeders is based on 50 percent of gross sales during the preceding business year. As an example, if 50 percent of gross sales are more than $500 but not more than $2,000, the annual cost of a license is $70. Identification tags for dogs and cats cost from $1.12 to $2.50 each. Other animals such as rabbits can be identified by a label attached to the primary enclosure containing a description of the animals in the enclosure. We estimate that the average licensed breeder requires about 10 hours annually to comply with the licensing paperwork and recordkeeping requirements. All newly licensed breeders will incur these costs. We estimate these costs would be between about $284 and $550 for a typical dog breeder. Costs at the 3,000 to 5,000 newly licensed dog, cat, and rabbit breeders for animal licensing, animal identification and recordkeeping could range between $853,000 and $2.8 million annually.

The newly regulated breeders will also need to meet regulatory standards concerning facilities and operations, animal health and husbandry, and transportation. However, as acknowledged by a wide spectrum of commenters on the proposed rule, most breeders maintain their facilities well above the minimum standards of the AWA. Therefore, the vast majority of newly regulated breeders will only need to incur licensing, animal identification, and recordkeeping costs and not need to make structural and/or operational changes in order to comply with the standards. Neither the number of entities that will need to make changes nor the extent of those changes is known. Therefore, the overall cost of structural and operational changes that will be incurred due to this rule is also unknown. However, we can estimate the general magnitude of these costs by assuming the newly regulated entities exhibit patterns of noncompliance similar to those of currently regulated wholesale breeders. We agree with many comments we received that most breeders that may be affected by this rule are already substantially in compliance.

Based on our experience regulating wholesale breeders, the most common areas of regulatory noncompliance at prelicensing and compliance inspections are veterinary care, facility maintenance and construction, shelter construction, primary enclosure minimum space requirements, and cleaning and sanitation. We apply percentages of noncompliance for these areas, multiplied by likely unit costs or cost ranges, to the estimated number of affected breeders described above to arrive at a total cost range for the rule. We estimate that costs for coming into compliance for currently noncompliant breeders could range from $2.9 million to $12.1 million in the first year, when both one-time structural changes will occur and annual operational changes will start.

The rule will also affect some currently licensed wholesale breeders. Expanding the licensing exemption from three or fewer breeding females to four or fewer breeding females could reduce the number of these licensees. We expect that the number of current licensees that will fall below the

exemption threshold following the implementation of this rule will be very small.

The majority of businesses affected are likely to be small entities. As explained, this wide range in total cost is mainly derived from the uncertainty surrounding the total number of breeders that will need to become licensed as a result of this rule and the number that will then need to make structural or operational changes. It derives to a lesser degree from the ranges in costs that are assumed will be incurred by the newly licensed facilities to remedy instances of noncompliance.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0392, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

**E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**List of Subjects in 9 CFR Parts 1 and 2**

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we are amending 9 CFR parts 1 and 2 as follows:

## PART 1—DEFINITION OF TERMS

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

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. In § 1.1, the definitions of *dealer* and *retail pet store* are revised to read as follows:

### § 1.1 Definitions.

* * * * *

*Dealer* means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section; any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than $500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

* * * * *

*Retail pet store* means a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species. In addition to persons that meet these criteria, *retail pet store* also includes any person who meets the criteria in § 2.1(a)(3)(vii) of this subchapter. Such definition excludes—

(1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes;

(2) Establishments or persons, except those that meet the criteria in § 2.1(a)(3)(vii), exhibiting, selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warmblooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.;

(3) Any establishment or person selling warmblooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes;

(4) Any establishment wholesaling any animals (except birds, rats, and mice); and

(5) Any establishment exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

* * * * *

## PART 2—REGULATIONS

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

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 2.1 is amended as follows:
■ a. By revising paragraph (a)(3)(i);
■ b. In paragraph (a)(3)(ii), by removing the words ''to a research facility, an exhibitor, a dealer, or a pet store'';
■ c. By revising paragraphs (a)(3)(iii) and (a)(3)(vii); and
■ d. In the OMB citation at the end of the section, by removing the words ''number 0579–0254'' and adding the words ''numbers 0579–0254 and 0579–0392'' in their place.

The revisions read as follows:

### § 2.1 Requirements and application.

(a) * * *

(3) * * *

(i) Retail pet stores as defined in part 1 of this subchapter;

* * * * *

(iii) Any person who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells, at wholesale, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than four breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more

than four breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership;

* * * * *

(vii) Any person including, but not limited to, purebred dog or cat fanciers, who maintains a total of four or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells, at retail, only the offspring of these dogs, cats, and/or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four breeding female dogs, cats, and/or small exotic or wild mammals, regardless of ownership, nor to any person maintaining breeding female dogs, cats, and/or small exotic or wild mammals on premises on which more than four breeding female dogs, cats, and/or small exotic or wild mammals are maintained, nor to any person acting in concert with others where they collectively maintain a total of more than four breeding female dogs, cats, and/or small exotic or wild mammals regardless of ownership.

* * * * *

Done in Washington, DC, this 11th day of September 2013.

**Edward Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2013–22616 Filed 9–17–13; 8:45 am]

**BILLING CODE 3410–34–P**

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 701

## RIN 3133–AE05

## Federal Credit Union Ownership of Fixed Assets

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending its regulation governing federal credit union (FCU) ownership of fixed assets to help FCUs better understand and comply with its requirements. The final rule does not make any substantive changes to those regulatory requirements. Rather, the amendments only clarify the regulation by improving its organization, structure, and ease of use.

**DATES:** This rule is effective November 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6593.

**SUPPLEMENTARY INFORMATION:**



### I. Background and Proposal

#### *A. Background*

The Federal Credit Union Act (FCU Act) authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.[1] NCUA's fixed assets rule interprets and implements this provision of the FCU Act.[2] In general, an FCU may only invest in property it intends to use to transact credit union business or in property that supports its internal operations or serves its members.[3] NCUA's fixed assets rule: (1) Limits FCU investments in fixed assets; (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and (3) prohibits certain transactions.[4]

For purposes of the rule, fixed assets are premises, furniture, fixtures, and equipment, including any office, branch office, suboffice, service center, parking lot, facility, real estate where an FCU transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.[5]

#### *B. March 2013 Proposal*

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing regulations to make their programs more effective and less burdensome. Additionally, the Board has a policy of continually reviewing NCUA's regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' [6] To carry out this policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. In 2012, NCUA reviewed its fixed assets rule as part of this process.

In March 2013, the Board proposed amendments to the fixed assets rule to make it easier for FCUs to understand.[7] NCUA has continually received questions about the fixed assets rule, indicating there is some confusion about its application. For example, FCUs have asked for clarification regarding the waiver process, and the provision that requires an FCU to partially occupy unimproved property acquired for future expansion. Accordingly, the Board proposed amendments to the fixed assets rule to clarify the waiver and partial occupation requirements and to improve the rule overall. The proposed amendments did not make any substantive changes to the regulatory requirements. Rather, they only clarified the rule and improved its overall organization, structure, and readability.

### II. Final Rule

#### *A. Summary of the Public Comments on the March 2013 Proposal*

NCUA received 9 comments on the proposed rule: 2 from credit union trade associations, 6 from state credit union leagues, and 1 from an FCU. All of the commenters supported the proposal and indicated the amendments make the fixed assets rule easier to understand. Specifically, commenters noted that the plain language revisions and structural reorganization improve the readability of the rule and the newly added definitions enhance clarity and flexibility. Commenters also expressed support for the revised waiver provisions, noting the revisions improve consistency within the regulation and allow FCUs to better understand the waiver process. Several commenters, however, offered suggestions for substantive changes to the regulatory requirements in the current rule.

For example, a number of commenters urged the Board to consider increasing or eliminating the current 5 percent aggregate limit on fixed assets. One commenter asserted that computers, automated terminals, and other equipment should no longer be treated as fixed assets subject to the 5 percent cap. Several commenters suggested the current requirement to fully occupy premises acquired for future expansion should be eliminated from the rule. Also, one commenter asked that the Board revise and extend the time frames for partially occupying improved premises and unimproved premises acquired for future expansion, which

[1] 12 U.S.C. 1757(4).

[2] 12 CFR 701.36.

[3] 12 CFR 721.3(d).

[4] 12 CFR 701.36.

[5] 12 CFR 701.36(c).

[6] NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2, Developing and Reviewing Government Regulations.

[7] 78 FR 17136 (Mar. 20, 2013).

under the current rule are three years and six years, respectively.

These comments are beyond the scope and intent of the March 2013 proposal, which only reorganized and clarified the current regulatory requirements for FCU ownership of fixed assets but did not substantively change them. The Board, however, may take these comments into consideration if it considers making substantive changes to NCUA's fixed assets rule in the future.

The March 2013 proposal did not propose changes to the current process for obtaining fixed assets waivers, but it requested public comment on ways to make the agency's overall waiver process more consistent and user friendly. Several commenters suggested NCUA's current waiver process is overly subjective and provides too much discretion to Regional Directors. Commenters also suggested that minimum criteria for evaluating waiver requests should be outlined in the rule text or in guidance. One commenter suggested that all waiver requests should be deemed approved if the Regional Director does not provide a response within a certain timeframe. Another commenter, however, stated that NCUA should respond to every waiver request and suggested that the automatic approval provision in the current rule should be eliminated.[8] Several commenters suggested that the rule should be modified to make available blanket waivers or expedited waivers. Finally, a number of commenters urged the Board to add a framework for waiver appeals.

The Board appreciates this feedback on waivers, especially as NCUA continues to consider ways to improve and clarify its overall waiver process. The Board notes that NCUA's National Supervision Policy Manual (NSPM) includes a chapter on waivers to enhance consistency in waiver processing. The NSPM contains standardized templates for response letters for fixed assets waiver requests and provides guidance on the information that would typically be addressed in the response, including specific reasons for denying a waiver.[9] NCUA will continue to take steps to improve the waiver process. FCUs are encouraged to contact their examiners and Regional Offices for guidance and assistance prior to submitting a fixed assets waiver application. Regional Directors will make a determination on complete waiver applications as expeditiously as possible. Based on safety and soundness considerations, however, Regional Offices may ask FCUs to submit additional information beyond that described in the rule text. Regional Directors will inform FCUs, in writing, of any additional documentation needed to complete their waiver applications. The Board clarifies that for FCUs with $10 billion or more in assets, the term ''Regional Office'' means the Office of National Examinations and Supervision (ONES) and the term ''Regional Director'' means the Director of ONES.[10]

Additionally, the Board emphasizes that any waiver of the 5 percent aggregate limit on fixed assets is considered a one-time event. An FCU with an approved waiver will be required to submit a new waiver request and supporting documentation for any future investment in fixed assets which exceeds an additional one percent of its shares and retained earnings over the amount approved. As a point of clarification, multiple purchases of fixed assets can be made within this one percent. Moreover, NCUA's granting of a waiver does not permit the FCU to operate indefinitely under an approved higher fixed asset threshold. The waiver will cease once the FCU's investments in fixed assets falls below the regulatory 5 percent limit.

*B. Summary of the Final Rule*

The Board is adopting the March 2013 proposed rule as final without change except for one minor modification. In short, the final rule: (1) Amends the regulatory text using logical organization, shorter sentences, active voice, and plain, everyday words; (2) adds an introductory section to define the scope of the regulation; (3) reorganizes the existing definitions to the beginning of the rule; (4) clarifies the meaning of ''unimproved land or unimproved real property'' and ''partially occupy'' by adding definitions of these terms to the regulation; and (5) clarifies the processes for obtaining waivers.

As noted, the final rule makes one minor modification from the proposed. One commenter suggested that the proposed definition of ''unimproved land or unimproved real property'' should be simplified in the final rule. Under the proposal, that term was defined as: (1) Raw land or land without development, significant buildings, structures, or site preparation; (2) land that has never had improvements; (3) land that was improved at one time but has functionally reverted to its unimproved state; or (4) *land that has been improved, but the improvements serve no purpose for the federal credit union's planned use of the property and are of little value relative to the project.*[11] This commenter suggested that the clause ''and are of little value relative to the project'' should be removed because the language is redundant and ambiguous. The Board agrees this clause is superfluous and that its removal does not change the substantive meaning of the definition. The final rule is modified accordingly. The Board emphasizes, however, that NCUA will consider improved land as unimproved for purposes of the fixed assets rule if the improvements, even if functionally and intrinsically valuable, serve no purpose for the FCU's planned use of the property.[12]

The Board reiterates that the while the definitions of the terms ''unimproved land or unimproved real property'' and ''partially occupy'' are not expressly defined in the current rule, the new definitions reflect NCUA's current interpretation of them. The addition of these definitions clarifies the partial occupancy provisions, but does not impose any new regulatory requirements.

## III. Regulatory Procedures

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under fifty million dollars in assets). This final rule improves the fixed assets regulation to help FCUs understand its requirements. The final rule does not make any substantive changes to the regulatory requirements. Rather, the changes are intended to improve the rule's organization, structure, and ease of use. NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[13] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. As noted above, the final rule makes the regulation

[8] 12 CFR 701.36(a)(2)(iv).

[9] See, e.g., NSPM, Appendix 6–A–6F.

[10] 12 CFR 700.2.

[11] 78 FR 17136, 17139 (Mar. 20, 2013) (Emphasis added).

[12] *Id.* at 17137.

[13] 44 U.S.C. 3507(d); 5 CFR part 1320.

easier to understand, but does not impose new paperwork burdens.

*C. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. Because the fixed assets regulation applies only to FCUs, this rule does 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. As such, NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

*D. Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[14]

*E. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 [15] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[16] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA because it merely makes the regulation easier to understand. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

**List of Subjects in 12 CFR Part 701**

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, on September 12, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 701 as follows:

[14] Public Law 105–277, 112 Stat. 2681 (1998).

[15] Public Law 104–121, 110 Stat. 857 (1996).

[16] 5 U.S.C. 551.

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

■ 2. Revise § 701.36 to read as follows:

### § 701.36 Federal credit union ownership of fixed assets.

(a) *Scope.* (1) Section 107(4) of the Federal Credit Union Act (12 U.S.C. 1757(4)) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. This section interprets and implements that provision and it:

(i) Limits investments in fixed assets;

(ii) Establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and

(iii) Prohibits certain transactions.

(2) This section applies only to federal credit unions.

(b) *Definitions.* For purposes of this section:

*Abandoned premises* means real property previously used to transact credit union business but no longer used for that purpose. It also means real property originally acquired for future credit union expansion but no longer intended for that purpose.

*Fixed assets* means premises and furniture, fixtures, and equipment.

*Furniture, fixtures, and equipment* means all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

*Immediate family member* means a spouse or other family member living in the same household.

*Investments in fixed assets* means:

(1) Any investment in improved or unimproved real property which a federal credit union is using, or intends to use, as premises;

(2) Any leasehold improvement on premises;

(3) The aggregate of all capital and operating lease payments on fixed assets, without discounting commitments for future payments to present value; or

(4) Any investment in furniture, fixtures, and equipment.

*Partially occupy* means occupation, on a full-time basis, of a portion of the premises that is:

(1) Consistent with the federal credit union's usage plan for the premises;

(2) Significant enough that the federal credit union is deriving practical utility from the occupied portion, relative to the scope of the usage plan; and

(3) Sufficient to show that the federal credit union will fully occupy the premises within a reasonable time.

*Premises* means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the federal credit union transacts or will transact business.

*Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by the federal credit union's management or NCUA.

*Senior management employee* means the federal credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer. For example, these individuals typically hold the title of President or Treasurer/Manager, Assistant President, Vice President or Assistant Treasurer/Manager, and Comptroller.

*Shares* means regular shares, share drafts, share certificates, or other savings.

*Unimproved land or unimproved real property* means:

(1) Raw land or land without development, significant buildings, structures, or site preparation;

(2) Land that has never had improvements;

(3) Land that was improved at one time but has functionally reverted to its unimproved state; or

(4) Land that has been improved, but the improvements serve no purpose for the federal credit union's planned use of the property.

(c) *Limits on investment in fixed assets.* If a federal credit union has $1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares and retained earnings. NCUA may waive this aggregate limit.

(1) To seek a waiver, a federal credit union must submit a written request to its Regional Office. The request must:

(i) Describe the proposed investment;

(ii) Indicate the approximate aggregate amount of fixed assets the federal credit union would hold after the investment (as a percentage of shares and retained earnings); and

(iii) Fully explain why the federal credit union needs the waiver.

(2) The Regional Director will inform the federal credit union, in writing, of the date its request was received and of any additional documentation needed.

(3) Within 45 days of the receipt of the federal credit union's waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a

written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(4) If a waiver is approved, the Regional Director will set an alternative limit on the federal credit union's aggregate investments in fixed assets, either as a dollar limit or as a percentage of its shares and retained earnings. Unless the Regional Director specifies otherwise, the federal credit union's future investments in fixed assets must not exceed an additional one percent of its shares and retained earnings over the amount approved.

(5) If the Regional Director does not respond in writing within the timeframe specified in paragraph (c)(3) of this section, the federal credit union may proceed with its proposed investment. However, the federal credit union's investment in fixed assets, and any such future investments, must not exceed the aggregate limit it requested.

(d) *Premises not currently used to transact credit union business.* (1) If a federal credit union acquires premises for future expansion and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the federal credit union (or the federal credit union and a credit union service organization or a vendor) uses the entire space on a full-time basis. Credit union service organizations and vendors must use the space primarily to support the federal credit union or to serve the federal credit union's members. The federal credit union must make its plans for full occupation available to NCUA upon request.

(2) If a federal credit union acquires premises for future expansion, it must partially occupy them within a reasonable period, but no later than three years after the date of acquisition. If the premises are unimproved land or unimproved real property, however, the three-year partial occupation requirement is extended to six years. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office within 30 months after the property is acquired and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(3) A federal credit union must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business. The federal credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the federal credit union must publicly advertise the property for sale. The federal credit union must complete the sale within five years of abandonment, unless NCUA waives this requirement. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(e) *Prohibited transactions.* (1) A federal credit union must not acquire, or lease for one year or longer, premises from any of the following, unless NCUA waives this prohibition:

(i) A member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual;

(ii) A corporation in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is an officer or director, or has a stock interest of 10 percent or more; or

(iii) A partnership, limited liability company, or other entity in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) A federal credit union must not lease for one year or longer premises from any of its employees if the employee is directly involved in investments in fixed assets, unless the federal credit union's board of directors determines the employee's involvement is not a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this section must be conducted at arm's length and in the interest of the federal credit union.

(4) To seek a waiver from any of the prohibitions in this paragraph (e), a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. Within 45 days of the receipt of the waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving its request. The Regional Director's decision will be based on safety and soundness considerations and a determination as to whether a conflict of interest exists.

[FR Doc. 2013–22729 Filed 9–17–13; 8:45 am]

**BILLING CODE 7535–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0707; Directorate Identifier 2013–NM–158–AD; Amendment 39–17582; AD 2013–18–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Honeywell ASCa Inc. Emergency Locator Transmitters Installed on Various Transport Category Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Honeywell ASCa Inc. emergency locator transmitters (ELTs) installed on various transport category airplanes. This AD requires various one-time general visual inspections of the ELT transmitter units (TUs), and corrective actions if necessary. This AD was prompted by a fire on a parked and unoccupied airplane; preliminary information indicated combustion in the area of the ELT TU. We are issuing this AD to detect and correct discrepancies of the battery wiring installation inside the TU, which could result in an electrical short and possible ignition source.

**DATES:** This AD becomes effective October 3, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 3, 2013.

We must receive comments on this AD by November 4, 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 Honeywell service information identified in this AD, contact Honeywell ASCa Inc., Customer and Product Support, Customer Support Operations, 3333 Unity Drive, Mississauga, ON, Canada L5L 3S6; telephone: 800–601–3099 (toll-free U.S.A./Canada); telephone: 602–365–3099 (international) email: *AeroR&OAvionics@honeywell.com*; Internet: *www.myaerospace.com.* For Boeing service information that is specified but not incorporated by reference 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 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 (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7301; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–25, dated August 15, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Following an event where a fire broke out on a parked and unoccupied aeroplane, the United Kingdom Air Accidents Investigation Branch (AAIB) carried out an investigation to determine the cause of the fire. Although the investigation is still ongoing, preliminary information indicated that there was combustion in the area of the ELT TU. Subsequent to the fire event, inspection of in-service ELT TUs revealed battery wiring installation discrepancies inside the TU that may result in an electrical short. The AAIB noted that in case of an electrical short, the ELT battery could provide the energy for an ignition.
>
> This [Canadian] AD is issued as a precautionary measure to address the possibility of a fire due to wiring installation discrepancies of either the ELT TU or the ELT Battery. Depending on the outcome of the AAIB investigation, Transport Canada may revise this [Canadian] AD or mandate additional corrective actions.

This AD requires one-time general visual inspections of the ELT TUs, and applicable corrective actions. Inspections include general visual inspections for deformation (including bulges and gaps) in the battery cover, damage (including cuts, breaks, cracks, and splits) to the black protective cover of the battery, damage (including cuts, breaks, and splits) to the battery wires and insulation, damage to the TU battery connection wires (including flattening and exposed wires and insulation), and discrepancies (i.e., the gasket shows signs of deformation or indentation, or any blue pull-tab is trapped between the cover and the TU) of the battery cover gasket. Corrective actions include returning the battery/TU to Honeywell, and doing the ''return to service'' actions (including marking/identifying the battery and TU; repeating the cover inspection one time; and installing the new or serviceable TU). You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Honeywell ASCa Inc. has issued Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Explanation of Compliance Time**

We acknowledge that a compliance time of 120 days is unusually long for an immediately adopted rule. In this case, however, we have determined that it is necessary to provide sufficient time for operators to adequately prepare to meet the requirements of this AD. Based on the large number of affected ELTs, we consider this compliance time necessary to avoid unnecessarily disrupting flight schedules. Although the Canadian AD mandates a 150-day compliance time, we have determined that the 120-day compliance time required by this AD will adequately address the identified unsafe condition. Therefore, a compliance time of 120 days has been specified in order to provide operators with sufficient time to accomplish the requirements of this AD.

**FAA's Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because discrepancies of the battery wiring installation inside the TU could result in an electrical short and possible ignition source. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0707; Directorate Identifier 2013–NM–158–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may

amend this AD 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 AD.

**Costs of Compliance**

We estimate that this AD affects 3,832 ELTs installed on transport category airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections | 1 work-hour × $85 per hour = $85 | $0 | $85 | $325,720 |

We have received no definitive data that would enable us to provide cost estimates for additional required actions, as the time required to accomplish those actions is specific to the airplane.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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 airworthiness directive (AD):

**2013–18–09 Honeywell ASCa Inc.:** Amendment 39–17582. Docket No. FAA–2013–0707; Directorate Identifier 2013–NM–158–AD.

**(a) Effective Date**

This AD becomes effective October 3, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Honeywell ASCs Inc. emergency locator transmitters (ELTs) Model RESCU 406AF and 406AFN with transmitter unit (TU) part numbers (P/Ns) 1152682–1, –2, and –3, installed on transport category airplanes, certificated in any category, but not limited to the airplanes identified in table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (C) OF THIS AD—AFFECTED AIRPLANE MODELS

| Manufacturer | Airplane model |
|---|---|
| (1) The Boeing Company | (i) 717–200 airplanes.<br>(ii) 727, 727C, 727–100, 727 –100C, 727–200, and 727–200F series airplanes.<br>(iii) 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes.<br>(iv) 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and 747SR, 747SP, 747–8F, and 747–8 series airplanes.<br>(v) 757–200, –200PF, –200CB, and –300 series airplanes.<br>(vi) 767–200, –300, –300F, and –400ER series airplanes.<br>(vii) 777–200, –200LR, –300, –300ER, and 777F series airplanes.<br>(viii) 787–8 airplanes.<br>(ix) MD–11 and MD–11F airplanes.<br>(x) DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes.<br>(xi) MD–88 airplanes.<br>(xii) MD–90–30 airplanes. |

TABLE 1 TO PARAGRAPH (C) OF THIS AD—AFFECTED AIRPLANE MODELS—Continued

| Manufacturer | Airplane model |
|---|---|
| (2) Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company. | 382, 382B, 382E, 382F, 382G, and 382J airplanes. |
| (3) Airbus | (i) A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.<br>(ii) A300 B4–601, B4–603, B4–620, and B4–622 airplanes.<br>(iii) A300 B4–605R and B4–622R airplanes.<br>(iv) A300 F4–605R and F4–622R airplanes.<br>(v) A300 C4–605R Variant F airplanes.<br>(vi) A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.<br>(vii) A320–111, –211, –212, –214, –231, –232, and –233 airplanes.<br>(viii) A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.<br>(ix) A330–223F and –243F airplanes.<br>(x) A330–201, –202, –203, –223, and –243 airplanes.<br>(xi) A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.<br>(xii) A340–211, –212, and –213 airplanes.<br>(xiii) A340–311, –312, and –313 airplanes.<br>(xiv) A340–541 airplanes.<br>(xv) A340–642 airplanes.<br>(xvi) A380–800 series airplanes. |
| (4) ATR—GIE Avions de Transport Régional. | (i) ATR42–200, –300, –320, and –500 airplanes.<br>(ii) ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes. |
| (5) Dassault Aviation | FALCON 7X airplanes. |

**(d) Subject**

Air Transport Association (ATA) of America Code 23, Communications.

**(e) Reason**

This AD was prompted by a fire on a parked and unoccupied airplane; preliminary information indicated combustion in the area of the ELT TU. We are issuing this AD to detect and correct discrepancies of the battery wiring installation inside the TU, which could result in an electrical short and possible ignition source.

**(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**

For any ELT TU with any serial number identified in paragraph 1.A., ''Effectivity,'' including the serial numbers identified in the Note in paragraph 1.A., of Honeywell Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013: Within 120 days after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Remove the TU from the airplane.

(2) Do one-time general visual inspections of the ELT TU, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013.

**(h) TU/Battery Pack Return**

During any inspection required by this AD, if any discrepancy is found that is unacceptable or exceeds limits as specified in Honeywell Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, return the TU or battery pack, as applicable, to Honeywell ASCa Inc., Customer and Product Support, Customer Support Operations, 3333 Unity Drive, Mississauga, ON, Canada L5L 3S6; telephone: 800–601–3099 (toll-free U.S.A./ Canada); telephone: 602–365–3099 (international) email: *AeroR&OAvionics@honeywell.com*; Internet: *www.myaerospace.com.*

(1) If the inspection was done on or after the effective date of this AD: Within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Within 10 days after the effective date of this AD.

**(i) Post-inspection Actions**

Before further flight after accomplishing the actions required by paragraph (g) of this AD: Perform all applicable return to service actions, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013. Install a TU that is identified in paragraph 3.F.(2) or 3.F.(3) of Honeywell Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013.

**(j) Parts Installation Limitations**

After installation or replacement of the TU as required by this AD or as specified in paragraph (k) of this AD, no person may install an ELT TU battery unless it is installed using a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent).

**(k) Acceptable Prior Actions for Certain Airplanes**

(1) For The Boeing Company Model 787–8 airplanes identified in AD 2013–15–07, Amendment 39–17523 (78 FR 45054, July 26, 2013): Accomplishment of the applicable requirements of AD 2013–15–07 before the effective date of this AD is acceptable for compliance with the requirements of paragraphs (g), (h), and (i) of this AD.

(2) This paragraph provides credit for the applicable actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using Honeywell Alert Service Bulletin 1152682–23–A22, dated August 1, 2013, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the actions required by paragraphs (g), (h), and (i) of this AD, if the applicable actions specified in the service information identified in paragraphs (k)(3)(i) through (k)(3)(vi) of this AD were performed before the effective date of this AD using the applicable service information identified in paragraphs (k)(3)(i) through (k)(3)(vi) of this AD. This service information is not incorporated by reference in this AD.

(i) For The Boeing Company Model 717–200 airplanes: Boeing Multi Operator Message MOM–MOM–13–0597–01B, dated July 28, 2013.

(ii) For The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes: Boeing Multi Operator Message MOM–MOM–13–0593–01B, dated July 28, 2013.

(iii) For The Boeing Company Model 747–400, –400D, and –400F series airplanes: Boeing Multi Operator Message MOM–MOM–13–0594–01B, dated July 28, 2013.

(iv) For The Boeing Company Model 767 airplanes: Boeing Multi Operator Message MOM–MOM–13–0595–01B, dated July 28, 2013.

(v) For The Boeing Company Model 777 airplanes: Boeing Multi Operator Message MOM–MOM–13–0596–01B, dated July 28, 2013.

(vi) For The Boeing Company Model 787–8 airplanes: Boeing Multi Operator Message MOM–MOM–13–0570–01B, dated July 19, 2013; or Boeing Multi Operator Message MOM–MOM–13–0590–01B, dated July 26, 2013.

**(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, 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.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–25, dated August 15, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov.*

(2) For Boeing service information that is specified but not incorporated by reference 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.*

(3) Honeywell service information specified but not incorporated by reference in this AD may be obtained at the addresses identified in paragraphs (n)(3) and (n)(4) of this AD.

**(n) Material Incorporated by Reference**

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

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

(i) Honeywell Alert Service Bulletin 1152682–23–A22, Revision 1, dated August 8, 2013.

(ii) Reserved.

(3) For Honeywell service information identified in this AD, contact Honeywell ASCa Inc., Customer and Product Support, Customer Support Operations, 3333 Unity Drive, Mississauga, ON, Canada L5L 3S6; telephone: 800–601–3099 (toll-free U.S.A./Canada); telephone: 602–365–3099 (international) email: *AeroR&OAvionics@honeywell.com*; Internet: *www.myaerospace.com.*

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

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

Issued in Renton, Washington, on September 6, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013–22396 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 418

**[Docket No. SSA–2012–0011]**

**RIN 0960–AH47**

## Medicare Determinations and Income-Related Monthly Adjustment Amounts to Medicare Part B Premiums; Conforming Changes to Regulations

**AGENCY:** Social Security Administration.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** We are modifying our regulations regarding Medicare Part B income-related monthly adjustment amounts (IRMAA) in order to conform to changes made to the Social Security Act (Act) by the Affordable Care Act. This rule freezes the modified adjusted gross income threshold and ranges from 2011 through 2019 and removes the requirement that beneficiaries consent to our release of Internal Revenue Service (IRS) information to the U.S. Department of Health and Human Services (HHS) for the purpose of adjudicating any appeal of an IRMAA to the Part B premium subsidy. We are also removing provisions that phased in IRMAA between 2007 and 2009 and updating a citation to reflect the transfer of authority for hearing appeals under Title XVIII of the Act from the Social Security Administration to HHS.

**DATES:** *Effective Date:* This interim final rule will be effective September 18, 2013.

*Comment Date:* To ensure that your comments are considered, we must receive them no later than November 18, 2013.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2012–0011 so that we may associate your comments with the correct regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2012–0011. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Craig Streett, Office of Income Security Programs, Social Security Administration, 2–R–24 Robert M. Ball Federal Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9793. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Medicare Part B is a voluntary medical insurance program that provides coverage for services such as physician's care, diagnostic services, and medical supplies. A beneficiary enrolled in Medicare Part B pays monthly premiums, deductibles, and co-insurance associated with covered services. The Centers for Medicare & Medicaid Services (CMS) issues rules and regulations about the Medicare program, including the standard monthly premium. We determine and

deduct the amount of certain Medicare Part B premiums from beneficiaries' Social Security benefits and make rules and regulations necessary to carry out these functions.

The Federal Government subsidizes the cost of Medicare Part B coverage. However, beneficiaries with modified adjusted gross incomes (MAGI) above a specified threshold must pay a higher percentage of the average cost of coverage than those with MAGI below the threshold.[1] We refer to this subsidy reduction as an IRMAA.

CMS determines and publishes the annual MAGI threshold and ranges. The IRS provides us with beneficiaries' MAGI information for the applicable tax year. We use this information to determine IRMAAs using the CMS-determined annual MAGI threshold.

In March 2010, Congress passed the Affordable Care Act.[2] The Affordable Care Act temporarily freezes the MAGI threshold above which beneficiaries must pay a higher percentage of the costs of their coverage. As a result, we are updating our regulations to reflect this change.

Section 3402 of the Affordable Care Act temporarily set aside the annual inflation adjustment used to set the MAGI threshold and ranges for purposes of determining IRMAAs. From January 1, 2011 through December 31, 2019, the dollar amounts used for 2010 are the threshold and ranges used to determine if an IRMAA will apply. During this period, the threshold is $170,000 for beneficiaries who file their Federal income taxes as married filing jointly and $85,000 for beneficiaries who file their Federal income taxes with any other filing status.[3] After 2019, these thresholds will resume adjustment for inflation as required by section 1839(i)(5) of the Act.

**Regulatory Changes**

We revised sections 418.1105, *What is the threshold?,* 418.1115, *What are the modified adjusted gross income ranges?,* and 418.1120, *How do we determine your income-related monthly adjustment amount?,* to reflect the new threshold and ranges established by the Affordable Care Act.

We removed section 418.1130 as well as language from sections 418.1001(b), 418.1101(c), 418.1125(b), and 418.1230(a) that described how we phased in the IRMAA. When Congress created the IRMAA, it provided for a gradual phase-in of the subsidy reduction. We completed the phase-in in 2009. Therefore, section 418.1130 and the phase-in language used in the revised sections are no longer necessary.

We deleted from section 418.1350 the requirement that an individual provide consent for us to release relevant tax return information to HHS' Office of Medicare Hearings and Appeals or Medicare Appeals Council for the purposes of adjudicating any appeal of the amount of an IRMAA to the Part B premium subsidy. The Affordable Care Act removed this requirement by amending section 6103(l)(20) of the Internal Revenue Code to provide that we may disclose return information to officers and employees of the Department of HHS to the extent necessary to resolve administrative appeals of premium subsidy adjustments or increased premiums.[4]

We also updated 20 CFR 404.900(a) to correct an outdated citation to the HHS regulations. We replaced the reference to 42 CFR 405.701(c) with 42 CFR 405.904(a)(1). 42 CFR 405.904(a)(1) provides that we make initial determinations and reconsiderations of Medicare Part A and B applications and entitlement, and HHS handles Medicare appeals following a reconsideration.

**Regulatory Procedures**

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.[5]

We find that good cause exists for proceeding without prior public notice and comment with respect to the changes that freeze the MAGI threshold and ranges at 2010 levels from January 1, 2011 until December 31, 2019 and that remove the requirement that individuals consent to our release of relevant tax information to HHS for adjudication of IRMAA appeals. These changes are nondiscretionary under the Affordable Care Act. Accordingly, we find that prior public comment with respect to these changes is unnecessary.

We also find that good cause exists for proceeding without prior public notice and comment with respect to the changes that remove the outdated phase-in procedures from our rules. The language we are removing has no current effect and has not applied since we completed the IRMAA phase-in in 2009. Therefore, we find prior comment with respect to these changes is also unnecessary.

We also find that good cause exists for proceeding without prior public notice and comment with respect to the change to 20 CFR 404.900(a) because it is a technical change that only updates a citation to the HHS regulations. Therefore, we also find that prior public comment with respect to this change is unnecessary.

Additionally, we find that good cause exists for dispensing with the 30-day delay in the effective date of this rule. For the reasons we stated above, we find that it is unnecessary to delay the effective date of the changes we are making in this interim final rule. Accordingly, we are making this interim final rule effective September 18, 2013.

**Executive Order 12866**

We consulted with the Office of Management and Budget (OMB) and determined that this interim rule meets the criteria for a significant regulatory action under Executive Order 12866. It was subject to OMB review.

**Regulatory Flexibility Act**

We certify that this interim final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

**Paperwork Reduction Act (PRA)**

These rules do not impose any new public reporting burdens under the PRA or affect any existing OMB-approved PRA collections.

(Catalog of Federal Domestic Assistance Program Nos. 93.774 Medicare Supplementary Medical Insurance; 96.002 Social Security—Retirement Insurance.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Aged, Alimony, Blind, Disability benefits, Government employees, Income taxes, Insurance, Investigations, Old-age, Survivors and disability insurance, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Travel and transportation expenses, Treaties, Veterans, Vocational rehabilitation.

[1] MAGI is defined in 42 U.S.C. 1395r(i)(4). The threshold amount is defined in 42 U.S.C. 1395r(i)(2).

[2] Public Law 111–148.

[3] 74 FR 54571, 54573 (2009).

[4] Public Law 111–148, sec. 3308(b)(2)(C)(iv).

[5] 5 U.S.C. 553(b)(B).

*20 CFR Part 418*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: September 9, 2013.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

For the reasons set out in the preamble, we amend 20 CFR chapter III, part 404, subpart J and 20 CFR chapter III, part 418, subpart B as set forth below:

## PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

## Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.900 by removing ''42 CFR 405.701(c)'' from paragraph (a) and adding in its place ''42 CFR 405.904(a)(1).''

## PART 418—MEDICARE SUBSIDIES

## Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

■ 3. The authority citation for subpart B of part 418 continues to read as follows:

**Authority:** Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

### § 418.1001 [Amended]

■ 4. Amend § 418.1001 by removing the last sentence of paragraph (b).

■ 5. Amend § 418.1101 by revising paragraph (c) to read as follows:

### § 418.1101 What is the income-related monthly adjustment amount?

* * * * *

(c) We will determine your income-related monthly adjustment amount using the method described in § 418.1120.

■ 6. Amend § 418.1105 by revising paragraphs (b) and (c) to read as follows:

### § 418.1105 What is the threshold?

* * * * *

(b) From January 1, 2011 through December 31, 2019, the modified adjusted gross income threshold is $170,000 for individuals with a Federal income tax filing status of married filing jointly. The threshold is $85,000 for individuals with any other filing status.

(c) Starting on January 1, 2020, the threshold amounts will resume adjustment for inflation as required by section 1839(i)(5) of the Act. In each year thereafter, CMS will set all modified adjusted gross income threshold amounts for the following year by increasing the preceding year's threshold amounts by any percentage increase in the Consumer Price Index rounded to the nearest $1,000. CMS will publish the amounts in the **Federal Register** in September of each year. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

■ 7. Revise § 418.1115 to read as follows:

### § 418.1115 What are the modified adjusted gross income ranges?

(a) We list the modified adjusted gross income ranges for the calendar years 2011 through and including 2019 for each Federal tax filing category in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment for these calendar years.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

(1) Greater than $85,000 and less than or equal to $107,000;

(2) Greater than $107,000 and less than or equal to $160,000;

(3) Greater than $160,000 and less than or equal to $214,000; and

(4) Greater than $214,000.

(c) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than $170,000 and less than or equal to $214,000;

(2) Greater than $214,000 and less than or equal to $320,000;

(3) Greater than $320,000 and less than or equal to $428,000; and

(4) Greater than $428,000.

(d) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than $85,000 and less than or equal to $129,000; and

(2) Greater than $129,000.

(e) In 2019, CMS will set all modified adjusted gross income ranges for 2020 and publish them in the **Federal Register**. In each year thereafter, CMS will set all modified adjusted gross income ranges by increasing the preceding year's ranges by any percentage increase in the Consumer Price Index rounded to the nearest $1,000 and will publish the amounts for the following year in September of each year.

■ 8. Revise § 418.1120 to read as follows:

### § 418.1120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount by using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for calendar years 2011 through and including 2019 in the column on the left in each table. The middle column in each table shows the percentage of the unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows the percentage of the Medicare Part B premium that will be subsidized by contributions from the Federal Government. We use your tax filing status and your modified adjusted gross income for the tax year to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually for each year after 2019 as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually after 2019 as described in § 418.1115(e).

(1) *General table of applicable percentages.* If, for the tax year, we use your filing status for your Federal income taxes for the tax year is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column.

You will pay an amount based on the percentage listed in the center column.

| Modified adjusted gross income effective in 2011–2019 | Beneficiary percentage (percent) | Federal premium subsidy (percent) |
|---|---|---|
| More than $85,000 but less than or equal to $107,000 | 35 | 65 |
| More than $107,000 but less than or equal to $160,000 | 50 | 50 |
| More than $160,000 but less than or equal to $214,000 | 65 | 35 |
| More than $214,000 | 80 | 20 |

(2) *Table of applicable percentages for joint returns.* If, for the tax year, we use your Federal tax filing status is married filing jointly for the tax year and your modified adjusted gross income for that tax year is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

| Modified adjusted gross income effective in 2011–2019 | Beneficiary percentage (percent) | Federal premium subsidy (percent) |
|---|---|---|
| More than $170,000 but less than or equal to $214,000 | 35 | 65 |
| More than $214,000 but less than or equal to $320,000 | 50 | 50 |
| More than $320,000 but less than or equal to $428,000 | 65 | 35 |
| More than $428,000 | 80 | 20 |

(3) *Table of applicable percentages for married individuals filing separate returns.* If, for the tax year, we use your Federal tax filing status is married filing separately, you lived with your spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

| Modified adjusted gross income effective in 2011–2019 | Beneficiary percentage (percent) | Federal premium subsidy (percent) |
|---|---|---|
| More than $85,000 but less than or equal to $129,000 | 65 | 35 |
| More than $129,000 | 80 | 20 |

(c) For each year after 2019, CMS will annually publish in the **Federal Register** the dollar amounts for the income-related monthly adjustment amount described in paragraph (b) of this section.

**§ 418.1125 [Amended]**

■ 9. Amend § 418.1125 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

**§ 418.1130 [Removed and reserved]**

■ 10. Remove and reserve § 418.1130.

■ 11. Amend § 418.1230 to remove paragraph (a), redesignate paragraphs (b) through (d) as paragraphs (a) through (c), and revise new paragraph (a) to read as follows:

**§ 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?**

(a) Subject to paragraph (b) of this section, when your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or reenrollment in Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

* * * * *

■ 12. Revise § 418.1350 to read as follows:

**§ 418.1350 What are the rules for review of a reconsidered determination or an administrative law judge decision?**

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 405. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations.

[FR Doc. 2013–22445 Filed 9–17–13; 8:45 a.m.]

**BILLING CODE 4191–02–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG–2013–0010]**

**RIN 1625–AA00**

## Safety Zone; Grain-Shipment and Grain-Shipment Assist Vessels, Columbia and Willamette Rivers

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone around all inbound and outbound grain-shipment and grain-shipment assist vessels involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, the United Grain Corporation facility on the Columbia River in Vancouver, WA, the Temco Irving facility on the Willamette River in Portland, OR, the Temco Kalama facility on the Columbia River in Kalama, WA, or the Louis Dreyfus Commodities facility on the Willamette River in Portland, OR while they are located on the Columbia and Willamette Rivers and their tributaries. For grain-shipment vessels, this safety zone extends to waters 500 yards ahead of the vessel and 200 yards abeam and astern of the vessel. For grain-shipment assist vessels, this safety zone extends to waters 100 yards ahead of the vessel and 50 yards abeam and astern of the vessel. These safety zones are being established to ensure that protest activities related to a labor dispute do not create hazardous navigation conditions for any vessel or other river user in the vicinity of these safety zones.

**DATES:** This rule is effective as to persons with actual notice from August 30, 2013 through September 18, 2015. In compliance with 5 U.S.C. 552(a)(1), this rule is effective without actual notice from the date it is published in the **Federal Register**, September 18, 2013, until September 18, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0010]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LTJG Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *msupdxwwm@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

### A. Regulatory History and Information

On June 4, 2013, the Coast Guard published a temporary interim rule and request for comments titled, ''Safety Zone; Grain-Shipment and Grain-Shipment Assist Vessels, Columbia and Willamette Rivers'' in the **Federal Register** (78 FR 33224). In that temporary interim rule, the Coast Guard established temporary safety zones around all inbound and outbound grain-shipment and grain-shipment assist vessels. Although the Coast Guard had good cause to issue that temporary interim rule without first publishing a proposed rule, it invited the submission of post-promulgation comments and related material regarding that rule through July 5, 2013. The Coast Guard received one submission to the docket that raised several objections.

### B. Basis and Purpose

Coast Guard Captains of the Port are granted authority to establish safety and security zones in 33 CFR 1.05–1(f) for safety and environmental purposes as described in 33 CFR part 165.

This safety zone is being implemented to ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers and their tributaries while grain-shipment and grain-shipment assist vessels transit to and from grain export facilities, anchorages, moorings, and launches in the Sector Columbia River Captain of the Port Zone. In addition, this safety zone is intended to ensure that members of the maritime public, those participating in protest activities on the water, law enforcement personnel, and vessel crews are not injured. Recreational boating, fishing, and protest activity afloat in these safety zones is particularly hazardous because of the effects of strong river currents, the maneuvering characteristics of grain-shipment vessels, and the safety sensitive mid-stream personnel transfers conducted by grain-shipment assist vessels with which recreational boaters and protesters may be unfamiliar. This safety zone applies equally to all waterway users and is intended to allow maximum use of the waterway consistent with safe navigation. The impact of the safety zone on maritime activity in the area is minimal because it has been and will only be enforced at times when grain-shipment and grain-shipment assist vessels are actively maneuvering. Grain-shipment vessel means any vessel bound for or departing or having previously loaded cargo at any of the following waterfront facilities: Columbia Grain in Portland, OR, United Grain Corporation in Vancouver, WA, Temco Irving in Portland, OR, Temco Kalama in Kalama, WA, or Louis Dreyfus Commodities in Portland, OR. This includes any vessel leaving anchor in the Columbia and Willamette Rivers that is bound for or had previously departed from the aforementioned waterfront facilities. Grain-shipment assist vessel means any vessel bound for or departing from a grain-shipment vessel to assist it in navigation during the movement of the grain-shipment vessel in the Columbia and Willamette Rivers and their tributaries. This includes but is not limited to tugs, pilot boats, and launches.

### C. Discussion of Comments, Changes and the Final Rule

This temporary final rule is unchanged from the temporary interim rule that was published on June 4, 2013 (78 FR 33224) as no substantive changes have been deemed necessary. One commenter submitted a letter to the docket containing several objections. The commenter asserted that the safety zones were unnecessary and overbroad. Specifically, the commenter questioned the necessity of the size of these zones. The sizes of these zones are based on the average size of the grain-shipment vessels operating on the river. The deep-draft grain-shipment vessels that operate on the river are typically between 600 and 800 feet in length. In general, deep-draft grain-shipment vessels maneuvering to or from a berth or anchorage operate at slow ahead, roughly between 6 knots and 4 knots. At this speed, it takes vessels such as these up to four ship lengths or about 1,000 yards to stop. Based on these speed and deceleration rates, a vessel would have roughly six minutes to clear the 500 yard length of the zone in sufficient time so as not to collide with incoming vessels. The size of the safety zones

specific to grain-shipment vessels established in this rule were, therefore, predicated upon this ''six minute pre-collision period'' and are deemed necessary in order to significantly reduce the risk posed by limited ship-to-boat communications and risk of propulsion failure by vessels or watercraft operating in the vicinity of grain-shipment vessels. The establishment of the 100 yard safety zone ahead of grain-shipment assist vessels mitigates the high risk of injury posed by the safety sensitive mid-stream transfer of personnel from one vessel to another and the mooring/anchorage operations conducted by grain-shipment assist vessels with which recreational boaters and protesters may be unfamiliar.

The commenter expressed the importance of ''on-water picketing'' in publicizing the ongoing labor dispute and concern that the safety zones unnecessarily burden the International Longshore and Warehouse Union's ability to convey their message to their intended audience of ''incoming vessels.'' The Coast Guard disagrees. Vessel operators may operate in any part of the river outside of the zones so long as they do so in accordance with the navigational rules. Additionally, the safety zone is not so large as to prevent vessels from coming within sight of inbound grain-shipment and grain-shipment assist vessels.

The commenter also disagreed with the Coast Guard's suggested use of on-water assembly areas. Prior to promulgation of the initial safety zone, outreach meetings were held between the local Captain of the Port, Columbia River Pilots, and union members. Based on these meetings, the Coast Guard proposed on-water assembly areas where protesters could safely exercise their First Amendment rights. Vessel operators may operate in any part of the river outside of the zones so long as they do so in accordance with the navigational rules. Finally, the comment misconceives the safety zones as being continuously enforced. The rule has been and will be enforced for narrow spans of time and only after notice is provided via Broadcast Notice to Mariners.

The commenter asserted that the proposed rule singles out labor unions for differential treatment and that ''regulating labor protests is the true object of this rule.'' We disagree. The safety zones created by the rule apply to all vessels not otherwise exempted and are intended to ensure the safe navigation of maritime traffic and protect the safety of life and property on the Columbia and Willamette rivers.

The commenter asserted the location of the safety zones would be unpredictable when the grain-shipment and grain-shipment assist vessels are in transit. The location of the safety zones will not be unpredictable. Enforcement of the safety zones will be preceded by a notice of enforcement via a Broadcast Notice to Mariners. This notification of enforcement will inform all waterway users that a safety zone is being enforced and will specifically identify the grain-shipment vessel by name and number and the grain-shipment assist vessels by name.

The commenter also expressed concern that an incoming vessel could purposefully cause on-water picketers to violate the temporary safety zones by skirting the shore closest to where the picket is staged, thus causing the protestors to inadvertently violate the safety zone. The Coast Guard does not anticipate that incoming vessels will operate in the manner described by the commenter. The operators of the grain-shipment and grain-shipment assist vessels are professional licensed mariners subject to Coast Guard oversight, and operating a grain-shipment vessel in the manner described by the comment may violate the Navigation Rules. Additionally, since these safety zones were promulgated, the Coast Guard has not received reports of grain-shipment vessels operating in the manner described by the commenter.

The commenter also asserted that the rule is inconsistent with the National Labor Relations Act, 29 U.S.C. 151 *et seq.,* because it prohibits picketing activity. However, the safety zones in the rule do not prohibit picketing, or other concerted activities by employees. Vessel operators, including those engaged in picketing activity, may operate in any part of the river outside of the zones so long as they do so in accordance with the navigational rules.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the safety zone will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: The owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the safety zone will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*3. Assistance for Small Entities*

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. In preparing this temporary final rule, the Coast Guard carefully considered the rights of lawful protestors. The safety zone created by this rule does not prohibit members of the public from assembling on shore or expressing their points of view from locations on shore. In addition, the Captain of the Port has, in coordination with protesters, recommended water areas in the vicinity of these safety zones where those desiring to do so can assemble and express their views without compromising navigational safety. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone around grain-shipment and grain-shipment assist vessels involved in commerce with grain export facilities on the Columbia and Willamette Rivers. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.T13–239 to read as follows:

**§ 165.T13–239 Safety Zone; Grain-Shipment Vessels and Grain-Shipment Assist Vessels, Columbia and Willamette Rivers.**

(a) *Definitions.* As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the International Regulations for Preventing Collisions at Sea, 1972 (commonly called 72 COLREGS) and the Inland Navigation Rules published in 33 CFR part 83.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels

within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Grain-shipment vessel* means any vessel bound for or departing or having previously loaded cargo at any of the following waterfront facilities: Columbia Grain in Portland, OR, United Grain Corporation in Vancouver, WA, Temco Irving in Portland, OR, Temco Kalama in Kalama, WA, or Louis Dreyfus Commodities in Portland, OR. This includes any vessel leaving anchor in the Columbia and Willamette Rivers that is bound for or had previously departed from the aforementioned waterfront facilities.

(7) *Grain-shipment assist vessel* means any vessel bound for or departing from a grain-shipment vessel to assist it in navigation during the movement of the grain-shipment vessel in the Columbia and Willamette Rivers and their tributaries. This includes but is not limited to tugs, pilot boats, and launches.

(8) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(9) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) *Location.* The following areas are safety zones: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are:

(1) Not more than 500 yards ahead of grain-shipment vessels and 200 yards abeam and astern of grain-shipment vessels underway on the Columbia and Willamette Rivers and their tributaries.

(2) Not more than 100 yards ahead of grain-shipment assist vessels and 50 yards abeam and astern of grain-shipment assist vessels underway on the Columbia and Willamette Rivers and their tributaries.

(3) Within a maximum 200-yard radius of grain-shipment vessels when anchored, at any berth, moored, or in the process of mooring on the Columbia and Willamette Rivers.

(c) *Effective Period.* This section is effective as to persons with actual notice starting August 30, 2013. This rule is effective starting on its publication in the **Federal Register** September 18, 2013 for purposes of 5 U.S.C. 552. This rule will be in effect until September 18, 2015 and will be activated for enforcement as described in paragraph (d) of this section.

(d) *Notice of Enforcement.* (1) The Sector Columbia River Captain of the Port will cause notice of the enforcement of the grain-shipment and grain-shipment assist vessels safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. This notification of enforcement will identify the grain-shipment vessel by name and IMO number and the grain-shipment assist vessels by name. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners or Local Notice to Mariners notifying the public when enforcement of the safety zone is suspended.

(2) Upon notice of enforcement by the Sector Columbia River Captain of the Port, the Coast Guard will enforce the safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zone, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within the safety zone contact the on-scene official patrol on VHF–FM channel 16 or 13, or the Sector Columbia River Command Center at phone number (503) 861–6211. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within the safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zone.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol, or a designated representative of the Captain of the Port at the Sector Columbia River Command Center, should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within the safety zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within the safety zone; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within the safety zone in order to do so.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) *Waiver.* The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: August 30, 2013.

**B.C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.*

[FR Doc. 2013–22611 Filed 9–17–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

**[Catalog of Federal Domestic Assistance (CFDA) Number: 84.326Z.]**

### Final Waiver and Extension of the Project Period for the Technical Assistance Coordination Center

**AGENCY:** Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Final waiver and extension of the project period.

**SUMMARY:** The Secretary waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This waiver and extension of the project period enables the currently funded Technical Assistance Coordination Center (Center) to receive funding from October 1, 2013, through September 30, 2014.

**DATES:** The waiver and extension of the project period are effective September 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** David Guardino, U.S. Department of Education, 400 Maryland Avenue SW., Room 4106, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–6209.

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

**SUPPLEMENTARY INFORMATION:** On August 2, 2013, we published a notice in the **Federal Register** (78 FR 46860) proposing an extension of project period and a waiver of 34 CFR 75.250 and 75.261(a) and (c)(2) in order to—

(1) Enable the Secretary to provide additional funds to the currently funded Center for an additional 12-month period, from October 1, 2013, through September 30, 2014; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the proposed waiver and extension and this final waiver and extension.

## Public Comment

In response to our invitation in the notice of proposed waiver and extension of the project period, we did not receive any substantive comments. Generally, we do not address comments that raise concerns not directly related to the proposed waiver and extension of project period.

## Background

On June 5, 2008, the Department published a notice in the **Federal Register** (73 FR 32016) inviting applications for new awards for fiscal year (FY) 2008 for a Technical Assistance Coordination Center (Center). The Center was funded under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (TA&D) program, authorized under section 663 of the Individuals with Disabilities Education Act (IDEA). Its purpose is to support ongoing communication, collaboration, and coordination among the centers in the OSEP-funded TA&D Network, and between these centers and other relevant federally funded TA&D centers, national professional organizations, and a broad spectrum of stakeholders. Approximately 30 OSEP-funded centers comprise the TA&D Network and provide technical assistance (TA) covering a variety of areas to State educational agencies (SEAs), local educational agencies (LEAs), Part C State lead agencies, early intervention service (EIS) programs and providers, families of children with disabilities, and others to improve services and outcomes for children served under Part B and Part C of IDEA.

Based on the selection criteria published in the 2008 notice inviting applications, the Department made one award for a period of 60 months to the Academy for Educational Development, Inc. (now FHI 360) to establish the Center, which is currently known as the Technical Assistance Coordination Center.

The Center has two broad goals:

(1) Create a resource center where the various TA&D centers funded by OSEP and other Federal agencies that provide assistance and support to States, LEAs, EIS programs and providers, and stakeholders in the field can store and share information and resources developed by TA providers.

(2) Support OSEP in developing a comprehensive network integrating a variety of relevant federally funded centers, professional organizations, and other stakeholders to collaborate, solve problems together, and exchange knowledge and expertise.

The Center accomplishes this work by: (a) Creating ongoing opportunities to promote coordination, communication, and collaboration among OSEP-funded TA centers and other federally funded TA centers through various workgroups, meetings, listservs, and TA communities of practice; (b) maintaining a Web site that houses tools that TA&D Network projects have developed or can use in their TA delivery (e.g., product database, discretionary database, and TA&D Network Web site search); and (c) sharing knowledge of best practices in collaboration with the TA&D Network and other federally funded TA centers.

The Center's current project period is scheduled to end on September 30, 2013. We do not believe that it would be in the public interest to run a competition for a new Center this year because the Department is planning to change the organization of its TA activities to better coordinate Federal TA activities to meet the needs of children with disabilities. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of TA services currently provided by the Center pending the changes to the organization of the Department's TA activities. For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and waives the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. The waiver allows the Department to issue a continuation award in the amount of $1,299,827 to FHI 360 for an additional 12-month period, which should ensure that the Center's support of, and collaboration and coordination with, the Federal TA&D centers will not be interrupted.

Any activities to be carried out during the year of the continuation award would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the 2008 Technical Assistance Coordination Center competition.

The requirements applicable to continuation awards for this competition, set forth in the June 5, 2008, notice inviting applications, and the requirements in 34 CFR 75.253 apply to any continuation awards sought by the current Technical Assistance Coordination Center grantee. We base our decisions regarding a continuation award on the program narrative, budget, budget narrative, and program performance report submitted by the current grantee, and the requirements in 34 CFR 75.253.

## Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We received no substantive comments on the proposed waiver and extension of project period, and we have not made any substantive changes to the proposed waiver and extension of project period. The Secretary has made a determination to waive the delayed effective date to ensure provision of TA services currently provided by the Center pending the changes to the organization of the Department's TA activities.

**Regulatory Flexibility Act Certification**

The Secretary certifies that this waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities.

The only entity that would be affected by this waiver and extension of the project period is the current grantee.

The Secretary certifies that this waiver and final extension would not have a significant economic impact on this entity because the extension of an existing project imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

**Paperwork Reduction Act of 1995**

This notice of final waiver and extension of the project period does not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to 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 this program.

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

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 13, 2013.

**Sue Swenson,**

*Deputy Assistant Secretary for Special Education and Rehabilitative Services, delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013–22714 Filed 9–17–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

**[Catalog of Federal Domestic Assistance (CFDA) Number: 84.326A]**

## Final Waiver and Extension of the Project Period for the Individuals With Disabilities Education Act Partnership Project

**AGENCY:** Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Final waiver and extension of the project period.

**SUMMARY:** The Secretary waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This waiver and extension of the project period enables the currently funded Individuals with Disabilities Education Act (IDEA) Partnership Project (Partnership Project) to receive funding from October 1, 2013, through September 30, 2014.

**DATES:** The waiver and extension of the project period are effective September 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Renee Bradley, U.S. Department of Education, 400 Maryland Avenue SW., Room 4103, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7277.

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

**SUPPLEMENTARY INFORMATION:** On August 2, 2013, we published a notice in the **Federal Register** (78 FR 46858) proposing an extension of project period and a waiver of 34 CFR 75.250 and 75.261(a) and (c)(2) in order to—

(1) Enable the Secretary to provide additional funds to the currently funded Partnership Project for an additional 12-month period, from October 1, 2013, through September 30, 2014; and

(2) Request comments on the proposed extension of project period and waiver.

There are no substantive differences between the proposed waiver and extension and this final waiver and extension.

**Public Comment**

In response to our invitation in the notice of proposed waiver and extension of the project period, we did not receive any substantive comments. Generally, we do not address comments that raise concerns not directly related to the proposed waiver and extension of project period.

**Background**

On July 15, 2008, the Department published a notice in the **Federal Register** (73 FR 40548) inviting applications for new awards for fiscal year (FY) 2008 for the Partnership Project funded under the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities (TA&D) program, authorized under section 663 of IDEA. The Partnership Project is intended to provide opportunities for national associations to collaborate with each other and with their collective State and local affiliates to improve the implementation of education policies and practices in States. The goal of the Partnership Project is also intended to bridge the gap between research, policy, and practice in both special education and general education so that the needs of all students can be meaningfully addressed. The Partnership Project has worked to unite multiple national associations and their State and local affiliates, representing policymakers, service providers, local-level administrators, and families, to improve the implementation of IDEA and outcomes for students with disabilities. These associations and their State and local affiliates need continued support to engage in meaningful dialogue, continual learning, and problem solving that will improve the implementation of IDEA and outcomes for students with disabilities.

The Department made one award for a period of 60 months to the National Association of State Directors of Special Education (NASDSE) to establish the Partnership Project. The current project period is scheduled to end on September 30, 2013.

The Partnership Project links the expertise and resources available through the OSEP Technical Assistance and Dissemination Network with

stakeholder organizations to build innovative dissemination strategies. The Partnership Project has developed and enhanced tools and strategies to improve the collaboration and engagement of stakeholder organizations linked with State improvement efforts to implement evidence-based practices, improve the implementation of IDEA, and improve outcomes for children with disabilities within general education reform efforts. Engagement tools and strategies include: (1) Various Dialogue Guides, focused on education reform efforts such as standards-based assessment, college- and career-readiness, and the school-to-prison pipeline; (2) communities of practice development and implementation; and (3) stakeholder engagement protocols.

At this time, we do not believe that it would be in the public interest to run a competition for a new Partnership Project because the Department is planning to change the organization of its technical assistance (TA) activities to better meet the needs of States and local affiliates and families. We also have concluded that it would be contrary to the public interest to have a lapse in the provision of the TA services currently provided by the Partnership Project pending the changes to the organization of the Department's TA activities.

For these reasons, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and waives the requirements in 34 CFR 75.261(a) and (c)(2), which allow the extension of a project period only if the extension does not involve the obligation of additional Federal funds. The waiver allows the Department to issue a continuation award in the amount of $1,699,000 to NASDSE for an additional 12-month period. This continuation award should ensure that the Partnership Project's TA, coordinated training, outreach, and dissemination of information to the partners' State and local affiliates and families will not be interrupted.

Any activities to be carried out during the year of the continuation award would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application as approved in the 2008 Partnership Project competition.

The requirements applicable to continuation awards for this competition set forth in the July 15, 2008, notice inviting applications and the requirements in 34 CFR 75.253 apply to any continuation awards sought by the current IDEA Partnership grantee. We base our decisions regarding a continuation award on the program narrative, budget, budget narrative, and program performance report submitted by the current grantee, as well as the requirements in 34 CFR 75.253.

**Waiver of Delayed Effective Date**

The Administrative Procedure Act requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We received no substantive comments on the proposed waiver and extension of project period, and we have not made any substantive changes to the proposed waiver and extension of project period. The Secretary has made a determination to waive the delayed effective date to ensure provision of TA services currently provided by the Partnership Project pending the changes to the organization of the Department's TA activities.

**Regulatory Flexibility Act Certification**

The Secretary certifies that this waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities.

The only entity that would be affected by this waiver and extension of the project period is the current grantee.

The Secretary certifies that this waiver and final extension would not have a significant economic impact on this entity because the extension of an existing project imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

**Paperwork Reduction Act of 1995**

This notice of final waiver and extension of the project period does not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to 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 this program.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 13, 2013.

**Sue Swenson,**

*Deputy Assistant Secretary for Special Education and Rehabilitative Services, delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013–22715 Filed 9–17–13; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2013–0511; FRL–9901–01–Region 7]**

### Approval and Promulgation of Implementation Plans; State of Missouri; Conformity of General Federal Actions to State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve the State Implementation Plan (SIP) submitted by the state of Missouri on August 12, 2011. This revision will update the state general conformity rule in its entirety to bring in into compliance with the Federal general conformity rule which was updated in the **Federal Register** on April 5, 2010. General conformity regulations prohibit Federal agencies from taking actions that may cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS). This rule applies to non-

attainment and maintenance areas of the state. The revision to Missouri's rule does not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This direct final rule will be effective November 18, 2013, without further notice, unless EPA receives adverse comment by October 18, 2013. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0511, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: bhesania.amy@epa.gov.*

3. *Mail or Hand Delivery:* Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2013–0511. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Bhesania at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:



## I. What is being addressed in this document?

EPA is approving the revision to the Missouri SIP submitted to EPA on August 12, 2011. Missouri's revision amends rule 10 CSR 10–6.300 *Conformity of General Federal Actions to State Implementation Plans,* which updates the state general conformity This revision will update the state general conformity rule in its entirety to bring it into compliance with the amended Federal general conformity rule. EPA has conducted an analysis of the State's amendments and has concluded that these revisions do not adversely affect the stringency of the SIP or adversely impact air quality.

## II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## III. What action is EPA taking?

EPA is approving the revision to the Missouri SIP by approving the State's request to amend 10 CSR 10–6.300 *Conformity of General Federal Actions to State Implementation Plans.* Conformity of General Federal Actions prohibits Federal agencies from taking actions that may cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS). This amendment improves the process entities use to demonstrate their actions will not contribute to a NAAQS violation, provides tools to encourage better communication and air quality planning between the state and Federal agencies, and encourages both Federal agencies and states to take early action to ensure projects will conform to SIPs. This rule applies to non-attainment and maintenance areas of the state. There are two revisions in the state rule that differ from the Federal rule. In 10 CSR 10–6.300 (3)(F)1.A. ''Procedures for Conformity Determinations of General Federal Actions,'' the state has added that planning assumptions must be derived from estimates of current, as well as, future population. The second revision that differs from the Federal rule is in 10 CSR 10–6.300 (3)(G)1, ''Mitigation of Air Quality Impacts.'' Language has been added that includes the identification and quantification of all emission reductions claimed for measures intended to mitigate air quality. In the same paragraph, language has been added that the process for implementation of these measures should include any necessary funding and tracking of emissions reductions. EPA has determined that these changes will not relax the SIP or adversely impact air quality.

We are processing this action as a direct final action because the revisions do not adversely impact air quality, and we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

*Statutory and Executive Order Reviews*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting

Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 16, 2013.

**Karl Brooks,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–6.300 to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * * | * | * | * * | * |
| **Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri** | | | | |
| * * | * | * | * * | * |
| 10–6.300 | Conformity of General Federal Actions to State Implementation Plans. | 07/31/11 | 0*9/18/13 [Insert* **Federal Register** *page number where the document begins*]. | 10–6.300(3)(F)1.A and 10–6.300(3)(G)1 includes language that differs from the Federal rule. |
| * * | * | * | * * | * |

* * * * *

[FR Doc. 2013–22619 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R05–OAR–2011–0868; EPA–R05–OAR–2012–0463; FRL–9900–92–Region 5]**

## Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Cleveland-Akron-Lorain Area to Attainment of the 1997 Annual Standard and 2006 24-Hour Standard for Fine Particulate Matter

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** As Ohio requested, EPA is redesignating the Cleveland-Akron-Lorain, Ohio nonattainment area (Cleveland area) to attainment for the 1997 annual and 2006 24-hour National Ambient Air Quality Standards (NAAQS or standards) for fine particulate matter ($PM_{2.5}$) because the area meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Ohio Environmental Protection Agency (Ohio EPA) submitted these requests to EPA on October 11, 2011, and May 30, 2012, and supplemented them on April 30, 2013. EPA is also taking several related actions. EPA is making a determination that the Cleveland area attained the 2006 24-hour $PM_{2.5}$ standard by its attainment date and that the area continues to attain both the 1997 annual and 2006 24-hour standards. EPA is approving, as revisions to the Ohio State Implementation Plan (SIP), the state's plans for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2023 in the area. EPA is approving the comprehensive emissions inventories submitted by Ohio EPA for nitrogen oxides ($NO_X$), sulfur dioxide ($SO_2$), primary $PM_{2.5}$, volatile organic compounds (VOC), and ammonia as meeting the requirements of the CAA. Finally, EPA finds adequate and is approving Ohio's $NO_X$ and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2022 for the Cleveland area.

**DATES:** This final rule is effective September 18, 2013.

**ADDRESSES:** EPA has established dockets for these actions under Docket ID Nos. EPA–R05–OAR–2011–0868 and EPA–R05–OAR–2012–0463. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:



### I. What is the background for the actions?

On September 14, 2011, at 76 FR 56641, EPA issued a final determination that the Cleveland area attained the 1997 annual $PM_{2.5}$ standard by the applicable attainment date of April 5, 2010, based on certified ambient monitoring data for the 2007–2009 monitoring period. On October 5, 2011, Ohio EPA submitted its request to redesignate the Cleveland nonattainment area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, and for EPA approval of the SIP revision containing an emissions inventory, maintenance plan, and MVEBs for the area. On May 30, 2012, Ohio EPA submitted a similar request for the 2006 24-hour $PM_{2.5}$ standard. In a supplemental submission to EPA on April 30, 2013, Ohio provided ammonia and VOC emissions inventories to supplement the comprehensive emissions inventories submitted as part of the redesignation requests.

On July 26, 2013, EPA published a rule in the **Federal Register** (78 FR 45116) proposing to determine that the Cleveland area continues to attain the 1997 annual standard and is attaining the 2006 24-hour $PM_{2.5}$ standard, and that the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA received one comment letter in support of the redesignation action, submitted on behalf of the Ohio Utility Group. EPA received no adverse comments on the proposal.

### II. Why is EPA taking these actions?

EPA has determined that the Cleveland area continues to attain the 1997 annual $PM_{2.5}$ NAAQS and that the area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by its applicable attainment date. EPA has also determined that all other criteria have been met for the redesignation of the Cleveland area from nonattainment to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and for approval of Ohio's maintenance plans for the area. *See* CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed rule of July 26, 2013, (78 FR 45116).

### III. Final Action

EPA is making a determination that the Cleveland area continues to attain the 1997 annual $PM_{2.5}$ standard and that the area attained the 2006 24-hour $PM_{2.5}$ standard by its attainment date and continues to attain that standard. EPA is determining that the area has met the requirements for redesignation under section 107(d)(3)(E) and 175A of the CAA. EPA is thus changing the legal designation of the Cleveland area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also approving Ohio's $PM_{2.5}$ maintenance plans for the Cleveland area as revisions to the Ohio SIP because the plans meet the requirements of section 175A of the CAA. EPA is approving 2005 and 2008 emissions inventories for primary $PM_{2.5}$, $NO_X$, and $SO_2$, and 2007/2008 emission inventories for VOC and ammonia as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2022 primary $PM_{2.5}$ and $NO_X$ MVEBs for the Cleveland area. These MVEBs will be used in future transportation conformity analyses for the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would

otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of planning requirements for this $PM_{2.5}$ nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

## IV. Statutory and Executive Order Reviews

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

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determinations of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not ''major rules'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 3, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR Parts 52 and 81 are amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1880 is amended by adding paragraphs (p)(6), (q)(6), (s)(2), and (t)(2) to read as follows:

**§ 52.1880 Control strategy: Particulate matter.**

* * * * *

(p) * * *

(6) The Cleveland-Akron-Lorain area (Cuyahoga, Lake, Lorain, Medina, Portage, and Summit Counties and Ashtabula Township in Ashtabula County), as submitted on October 5, 2011. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Cleveland-Akron-Lorain area of 1,371.35 tpy for primary $PM_{2.5}$ and 35,094.70 tpy for $NO_X$ and 2022 motor vehicle emissions budgets of 880.89 tpy for primary $PM_{2.5}$ and 17,263.65 tpy for $NO_X$.

(q) * * *

(6) Ohio's 2005 and 2008 $NO_X$, primary $PM_{2.5}$, and $SO_2$ emissions inventories and 2007/2008 VOC and ammonia emission inventories, as submitted on October 5, 2011 and supplemented on April 30, 2013, satisfy the emission inventory requirements of

section 172(c)(3) of the Clean Air Act for the Cleveland-Akron-Lorain area.

* * * * *

(s) * * *

(2) The Cleveland-Akron-Lorain area (Cuyahoga, Lake, Lorain, Medina, Portage, and Summit Counties), as submitted on May 30, 2012. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Cleveland-Akron-Lorain area of 1,371.35 tpy for primary $PM_{2.5}$ and 35,094.70 tpy for $NO_X$ and 2022 motor vehicle emissions budgets of 880.89 tpy for primary $PM_{2.5}$ and 17,263.65 tpy for $NO_X$.

(t) * * *

(2) Ohio's 2005 and 2008 $NO_X$, primary $PM_{2.5}$, and $SO_2$ emissions inventories and 2007/2008 VOC and ammonia emission inventories, as submitted on May 30, 2012 and supplemented on April 30, 2013, satisfy the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Cleveland-Akron-Lorain area.

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by revising the entry for Cleveland-Akron-Lorain, OH in the table entitled ''Ohio–$PM_{2.5}$ (Annual NAAQS)'' and the entry for Cleveland-Akron-Lorain, OH in the table entitled ''Ohio–$PM_{2.5}$ (24-hour NAAQS)'' to read as follows:

**§ 81.336 Ohio.**

* * * * *

OHIO–$PM_{2.5}$

[Annual NAAQS]

| Designated area | Designation [a] | |
|---|---|---|
| | Date [1] | Type |
| * * * * * * * | | |
| Cleveland-Akron-Lorain, OH: | | |
| Ashtabula County (part) | 9/18/2013 | Attainment. |
| Ashtabula Township | | |
| Cuyahoga County | | |
| Lake County | | |
| Lorain County | | |
| Medina County | | |
| Portage County | | |
| Summit County | | |
| * * * * * * * | | |

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

OHIO–$PM_{2.5}$

[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| * * * * * * * | | | | |
| Cleveland-Akron-Lorain, OH: | | | | |
| Cuyahoga County | Unclassifiable/ Attainment. | 9/18/2013 ..... | Attainment. | |
| Lake County | | | | |
| Lorain County | | | | |
| Medina County | | | | |
| Portage County | | | | |
| Summit County | | | | |
| * * * * * * * | | | | |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

* * * * *

[FR Doc. 2013–22620 Filed 9–17–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R05–OAR–2012–0337 and EPA–R05–OAR–2012–0462; FRL–9900–79–Region 5]**

## Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Steubenville-Weirton Area to Attainment of the 1997 Annual Standard and the 2006 24-Hour Standard for Fine Particulate Matter

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is redesignating under the Clean Air Act (CAA) the Ohio portion of the Steubenville-Weirton area (Jefferson County, OH and Brooke and Hancock Counties, WV) to attainment for the 1997 annual and 2006 24-hour national ambient air quality standards (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). On April 16, and May 31, 2012, the Ohio Environmental Protection Agency (OEPA) submitted a request for EPA to redesignate the Steubenville-Weirton Ohio nonattainment area. EPA determined that the Steubenville-Weirton area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ standard, and proposed to approve Ohio's request to redesignate the area on July 11, 2013. EPA's final rulemaking involves several related actions. EPA is approving, as a revision to the Ohio state implementation plan (SIP), the state's plan for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the area through 2025. EPA is making a finding of insignificance for Ohio's motor vehicle emissions of nitrogen oxides ($NO_X$) and direct $PM_{2.5}$ for the Steubenville-Weirton area for transportation conformity purposes. Therefore, as Ohio requested, EPA is redesignating the Ohio portion of the Steubenville-Weirton area to attainment for the 1997 $PM_{2.5}$ annual and 2006 24-hour standards.

**DATES:** This rule will be effective September 18, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification EPA–R05–OAR–2012–0337 and EPA–R05–OAR–2012–0462. All documents in these dockets are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:



### I. What is the background for the actions?

On April 16, and May 31, 2012, OEPA submitted a request for EPA to redesignate the Steubenville-Weirton nonattainment area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and for EPA approval of the state's SIP revision containing an emissions inventory and a maintenance plan for the area. On July 11, 2013, (78 FR 41752), EPA proposed redesignation and proposed approval of Ohio's plan for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Finally, for transportation conformity purposes EPA is approving Ohio's determination that on-road emissions of $PM_{2.5}$ and $NO_X$ are insignificant contributors to $PM_{2.5}$ concentrations in the area. Additional background for today's action is set forth in EPA's July 11, 2013, proposed rulemaking.

### II. What actions is EPA taking?

EPA has determined that the entire Steubenville-Weirton area is attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ standard (78 FR 41752) and that the Ohio portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Thus, EPA is changing the legal designation of the Ohio portion of the Steubenville-Weirton area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. This action does not address the West Virginia portion of the Steubenville-Weirton area. EPA is also taking several additional actions related to Ohio's $PM_{2.5}$ redesignation requests, as discussed below.

EPA is approving Ohio's 1997 and 2006 $PM_{2.5}$ maintenance plans for the Steubenville-Weirton area as revisions to the Ohio SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Steubenville-Weirton area in attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2025.

EPA is also approving the 2005 and 2008 emission inventories for primary $PM_{2.5}$,[1] $NO_X$, and sulfur dioxide ($SO_2$),[2] documented in Ohio's $PM_{2.5}$ redesignation request submittals. These emissions inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, EPA is approving Ohio's determination for transportation conformity purposes that on-road emissions of $PM_{2.5}$ and $NO_X$ are insignificant contributors to $PM_{2.5}$ concentrations in the area.

Further discussion of the basis for these actions was provided in the proposal on July 11, 2013 (78 FR 41752).

### III. What is EPA's response to comments?

EPA received no comments on its proposed rulemaking.

### IV. Why is EPA taking these actions?

EPA has determined that the Steubenville-Weirton area has continued to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA has also determined that all other criteria have been met for the redesignation of the Ohio portion of the Steubenville-Weirton area from nonattainment to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and for approval of Ohio's maintenance plan for the area. *See* CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed rulemaking of July 11, 2013,

[1] Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[2] $NO_X$ and $SO_2$ are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

(78 FR 41752), and in this final rulemaking.

**V. Final Action**

EPA has previously made the determination that the Steubenville-Weirton area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ standard (76 FR 56641; 77 FR 28264, respectively). EPA is determining that the area continues to attain the standards and that the Ohio portion of the area meets the requirements for redesignation to attainment of the standards under sections 107(d)(3)(E) and 175A of the CAA. Thus, EPA is changing the legal designation of the Ohio portion of the Steubenville-Weirton area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also approving Ohio's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plans for the Steubenville-Weirton area as a revision to the SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving the 2005 and 2008 emissions inventories for primary $PM_{2.5}$, $NO_X$, and $SO_2$, documented in Ohio's April 16, and May 31, 2012, submittals as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, EPA is approving Ohio's determination for transportation conformity purposes that on-road emissions of $PM_{2.5}$ and $NO_X$ are insignificant contributors to $PM_{2.5}$ concentrations in the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule—grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication—as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Ohio of various requirements for the Ohio portion of the Steubenville-Weirton area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

**VI. Statutory and Executive Order Reviews**

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

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 27, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR Parts 52 and 81 are amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1880 is amended by adding paragraphs (p)(5), (q)(5), (s), and (t) to read as follows:

**§ 52.1880 Control strategy: Particulate matter.**

* * * * *

(p) * * *

(5) The Ohio portion of the Steubenville-Weirton nonattainment area (Jefferson County). The maintenance plan establishes a determination of insignificance for both $NO_X$ and primary $PM_{2.5}$ for conformity purposes.

(q) * * *

(5) Ohio's 2005 and 2008 $NO_X$, directly emitted $PM_{2.5}$, $SO_2$, VOC, and ammonia emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Steubenville-Weirton area.

* * * * *

(s) Approval—The 2006 24-hour $PM_{2.5}$ maintenance plans for the following areas have been approved:

(1) The Ohio portion of the Steubenville-Weirton nonattainment area (Jefferson County). The maintenance plan establishes a determination of insignificance for both $NO_X$ and primary $PM_{2.5}$ for conformity purposes.

(t) Approval—The 2006 24-hour $PM_{2.5}$ comprehensive emissions inventories for the following areas have been approved:

(1) Ohio's 2005 and 2008 $NO_X$, directly emitted $PM_{2.5}$, $SO_2$, VOC, and ammonia emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Steubenville-Weirton area.

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by revising the entry for Steubenville-Weirton, OH-WV in the tables entitled ''Ohio—$PM_{2.5}$ (Annual NAAQS)'' and ''Ohio—$PM_{2.5}$ (24-Hour NAAQS)'' to read as follows:

**§ 81.336 Ohio.**

* * * * *

OHIO—$PM_{2.5}$

[Annual NAAQS]

| Designated area | Designation [a] | |
|---|---|---|
| | Date [1] | Type |
| * * * * * | * | * |
| Steubenville-Weirton, OH–WV: | | |
| Jefferson County | 9/18/2013 | Attainment. |
| * * * * * | * | * |

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

* * * * *

OHIO—$PM_{2.5}$

[24-Hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| * * * * * | * | * | * | * |
| Steubenville-Weirton, OH–WV: | | | | |
| Jefferson County | | Unclassifiable/Attainment | 9/18/2013 | Attainment. |
| * * * * * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

* * * * *

[FR Doc. 2013–22623 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2012–0911; FRL–9398–9]**

## Quinoxyfen; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of quinoxyfen in or on multiple commodities which are identified and discussed later in this document. This regulation also deletes the established tolerances in or on grape; pepper, bell; pepper, nonbell; and strawberry as they will be superseded by crop group/subgroup tolerances established by this tolerance rule. The Interregional Research Project Number 4 (IR–4) Project Headquarters requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 18, 2013. Objections and requests for hearings must be received on or before November 18, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0911, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0911 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 18, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0911, by one of the following methods:

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

### II. Summary of Petitioned-for Tolerance

In the **Federal Register** of Wednesday, January 16, 2013 (78 FR 3377) (FRL–9375–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8117) by IR–4 Project Headquarters, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.588 be amended by establishing tolerances for residues of the fungicide quinoxyfen, 5,7-dichloro-4-(4-fluorophenoxy)quinoline, in or on berry, low growing, subgroup 13–07G at 0.90 parts per million (ppm); fruiting, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.60 ppm and vegetable, fruiting, group 8–10 at 1.7 ppm. In addition, the petition requested removal of established tolerances in or on grape at 0.60 ppm; strawberry at 0.90 ppm; pepper, bell at 0.35 ppm; and pepper, nonbell at 1.7 ppm, as these will be superseded upon approval of the proposed tolerances. That document referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA has revised proposed tolerance levels for several commodities and revised the quinoxyfen tolerance expression for all established commodities. The reasons for these changes are explained in Unit IV.C.

### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The primary target organs affected by quinoxyfen are the liver and kidney. The most sensitive species was the rat. Liver effects were seen in the subchronic rat and mouse studies as well as the chronic dog study. Subchronic effects observed in rats and mice at high doses included increased liver weights, hepatocellular hypertrophy, and individual cell hepatocellular necrosis. Chronic effects observed in the dog included increased liver weights, increased alkaline phosphatase levels, and increased incidence of very slight to slight microscopic hepatic lesions. Kidney effects were noted in the rat combined chronic/carcinogenicity study that resulted in an increased severity of chronic progressive glomerulonephropathy in males. Body-weight decrements were seen in the rat and/or mouse subchronic, chronic and carcinogenicity studies as well as the rabbit developmental and rat reproduction studies.

Oral rat and rabbit developmental studies showed no increased qualitative or quantitative susceptibility of offspring to quinoxyfen *in utero.* In the rabbit developmental toxicity study, maternal and developmental toxicity were observed at the highest dose tested (HDT) (lowest-observed adverse-effect level; LOAEL = 200 mg/kg/day). Maternal effects included inanition (exhaustion due to lack of nourishment), clinical signs, decreased body weight and body-weight gains, decreased food consumption, and increased incidence of abortion late in pregnancy. Developmental toxicity was evidenced as increased incidence of abortion late in pregnancy. No maternal or developmental toxicity was observed in the rat developmental study up to the limit dose of 1,000 mg/kg/day. In the 2-generation rat reproduction study, no parental effects were observed up to the HDT (100 mg/kg/day) while first-generation pup weights were reduced at the same dose. There is apparent quantitative susceptibility when looking at the 2-generation reproductive study in isolation, but when using a weight-of-evidence approach that puts the offspring findings in the 2-generation reproduction toxicity study in context with the full toxicological database there is no concern for susceptibility to offspring since it is anticipated that parental toxicity would have been observed at the same dose (see Unit III.D.2).

No evidence of neurotoxicity or neuropathology was seen in any of the submitted studies.

A 28-day immunotoxicity study showed no evidence that quinoxyfen elicits an immunotoxic response up to the HDT.

The EPA has classified quinoxyfen as ''not likely to be carcinogenic to humans'' based on no evidence of carcinogenicity in rat or mice studies. Moreover, quinoxyfen did not show evidence of mutagenicity in *in vitro* or *in vivo* studies.

Specific information on the studies received and the nature of the adverse effects caused by quinoxyfen as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: ''Quinoxyfen. Human-Health Risk Assessment for the Proposed Uses on Vegetable, Fruiting, Group 8–10; Fruit, Small Vine Climbing, Except Fuzzy Kiwifruit, Subgroup 13–07F; and Berry, Low Growing Subgroup 13–07G,'' dated August 20, 2013, pp. 27–30 in docket ID number EPA–HQ–OPP–2012–0911.

*B. Toxicological Points of Departure/Levels of Concern*

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

Following is a summary of the ''Dose-Response Assessment'' with the appropriate toxicological endpoints used if available from the human health risk assessment.

1. *Acute dietary endpoint (all populations).* There were no adverse effects observed attributable to a single dose for the general population (including infants and children) or females 13–49 years of age; therefore, an acute RfD and PAD were not calculated for this exposure scenario.

2. *Chronic dietary endpoint (all populations).* The chronic RfD (cRfD) was established based on the NOAEL (20 mg/kg/day) from the rat combined chronic toxicity/carcinogenicity study. The LOAEL of 80 mg/kg/day in this study is based on increases in severity of chronic progressive glomerulonephropathy in the males and minimal decreases in body weight and body-weight gain in both sexes. The NOAEL of 20 mg/kg was chosen because the study and endpoint are appropriate for the route and duration of exposure. The cPAD of 0.2 mg/kg/day is derived from the NOAEL of 20 mg/kg/day and a 100-fold uncertainty factor (10X for interspecies extrapolation, 10X for

intraspecies variation, and 1X for FQPA SF).

3. *Cancer classification.* The Agency classified quinoxyfen as ''not likely to be carcinogenic to humans'' by all routes of exposure based upon lack of evidence of carcinogenicity in rats and mice.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to quinoxyfen, EPA considered exposure under the petitioned-for tolerances as well as all existing quinoxyfen tolerances in 40 CFR 180.588. EPA assessed dietary exposures from quinoxyfen in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. No such effects were identified in the toxicological studies for quinoxyfen; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used Dietary Exposure Evaluation Model—Food Consumption Intake Database (DEEM–FCID), ver. 3.16 which incorporates consumption data from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEA). The unrefined chronic analysis assumed 100 percent crop treated (PCT), DEEM 7.81 default concentration factors, and tolerance-level residues for all existing and proposed crop uses.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that quinoxyfen does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

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

Based on the First Index Reservoir Screening Tool (FIRST) for surface water, and the Screening Concentration in Ground Water (SCI–GROW) models for ground water, the estimated drinking water concentrations (EDWCs) of quinoxyfen for chronic exposure, assessments are estimated to be 0.66 ppb for surface water and for ground water, the estimated drinking water concentration is 0.0034 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.66 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Quinoxyfen is not registered for any specific use patterns that would result in residential exposure.

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

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

*D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity.* Oral rat and rabbit developmental studies showed no increased qualitative or quantitative susceptibility of offspring to quinoxyfen *in utero.* In isolation, there is evidence of increased quantitative susceptibility in the 2-generation reproduction toxicity study. No parental effects were observed up to the HDT (100 mg/kg/day) while first-generation pup weights were reduced at the same dose. Concern is low since:

i. The effects in pups are well characterized with a clear NOAEL of 20 mg/kg/day.

ii. The pup effects are minimal at the LOAEL and only noted in the first-generation offspring.

iii. The doses and endpoints selected for regulatory purposes would address concerns for the pup effects noted in the rat reproduction study.

Additionally, taking into consideration the full toxicological database, there would be no susceptibility to offspring since assessments to parental animals are intentionally limited in the 2-generation reproduction study to avoid stressing dams and affecting the rearing and care of offspring. If additional evaluations had been performed on parental animals in the 2-generation reproduction study, including histopathology and organ weight assessments, then it is expected that the kidney and liver effects observed in the rat subchronic oral study and in the interim (12 months) and final sacrifices of the rat chronic toxicity/carcinogenicity study would have been seen at the 100 mg/kg/day dose in the reproduction study. Therefore, when using a weight-of-evidence approach that puts the offspring findings in the 2-generation reproduction toxicity study in context with the full toxicological database there is no concern for susceptibility to offspring since it is anticipated that parental toxicity would have been observed at the same dose.

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

i. The toxicity database for quinoxyfen is complete.

ii. There is no indication that quinoxyfen is a neurotoxic chemical based on available acute and subchronic neurotoxicity studies. EPA determined that there is no need to require a developmental neurotoxicity study or apply additional uncertainty factors to account for neurotoxicity.

iii. Using the full toxicological database, there is no indication that quinoxyfen will result in increased susceptibility to offspring (see Unit III.D.2).

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT, tolerance-level residues, and DEEM 7.81 default processing factors. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to quinoxyfen in drinking water. These assessments will not underestimate the exposure and risks posed by quinoxyfen.

*E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure and no acute dietary endpoint was identified for any segment of the United States (U.S.) population. Therefore, quinoxyfen is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to quinoxyfen from food and water will utilize 8.5% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for quinoxyfen.

3. *Short-term and intermediate-term risks.* Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Quinoxyfen is not registered for any use patterns that would result in residential exposure. Therefore, the short-term and intermediate-term aggregate risk is the sum of the risk from exposure to quinoxyfen through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, quinoxyfen is not expected to pose a cancer risk to humans.

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

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

An adequate gas chromatography/mass-selective detector (GC/MSD) method is available for enforcing quinoxyfen tolerances (DowElanco Procedure ERC95.26); a successful petition method validation (PMV) has been completed. The lowest level of method validation (LLMV) was 0.01 ppm. Samples from the submitted field and processing studies were analyzed using a high-performance liquid chromatography/mass spectrometry (HPLC/MS) method derived from Dow AgroSciences Report RF 98–200 dated May 31, 1999; method entitled ''Determination of Residues of Quinoxyfen Applied as EF–1295 in Hops.'' The LLMV was 0.01 ppm for quinoxyfen in all tomato matrices.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

*B. International Residue Limits*

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

Codex MRLs are established for residues of quinoxyfen per se in/on grapes, strawberries, and peppers. EPA is raising the level of the requested U.S. tolerances for residues of quinoxyfen in/on the berry, low growing subgroup 13–07G and the fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F in order to harmonize with the Codex MRLs. Harmonization of the requested U.S. tolerance for residues of quinoxyfen in/on the vegetable, fruiting, group 8–10 (1.7 ppm) with the Codex MRL for peppers (1 ppm) is not possible because residue data from field trials conducted in the U.S. with quinoxyfen show that residues levels resulting from use of quinoxyfen under the existing U.S. registration on peppers may exceed the Codex MRL.

*C. Revisions to Petitioned-for Tolerances*

EPA increased the proposed tolerance levels for fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F and berry, low growing, subgroup 13–07G to 2.0 ppm and 1.0 ppm, respectively, in order to harmonize with international Codex maximum residue limits (MRLs). EPA relied on Organization for Economic Co-operation and Development (OECD) tolerance-calculation procedures and the submitted residue data sets in establishing these tolerances.

In addition, EPA revised the quinoxyfen tolerance expression to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of quinoxyfen not specifically mentioned; and

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

**V. Conclusion**

Therefore, tolerances are established for residues of quinoxyfen (5,7-dichloro-4-(4-fluorophen oxy)quinoline) in or on berry, low growing, subgroup 13–07G at 1.0 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; and vegetable, fruiting, group 8–10 at 1.7 ppm.

**VI. Statutory and Executive Order Reviews**

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: September 9, 2013.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.588 amend paragraph (a) as follows:

■ i. Revise the introductory text,

■ ii. Remove entries for commodities: ''Grape''; ''Pepper, bell''; ''Pepper, nonbell''; and ''Strawberry'', and

■ iii. Alphabetically add the following commodities to the table.

The additions read as follows:

**§ 180.588 Quinoxyfen; tolerance for residues.**

(a) *General.* Tolerances are established for residues of the fungicide quinoxyfen, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only quinoxyfen (5,7-dichloro-4-(4-fluorophenoxy)quinoline).

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Berry, low growing, subgroup 13–07G | 1.0 |
| Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F | 2.0 |
| * * * * * | |
| Vegetable, fruiting, group 8–10 | 1.7 |

* * * * *

[FR Doc. 2013–22597 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2012–0635; FRL–9395–1]**

### Chlorantraniliprole; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of the insecticide chlorantraniliprole in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation removes established tolerances for certain commodities/groups superseded by this action. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 18, 2013. Objections and requests for hearings must be received on or before November 18, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0635, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through

Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0635 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 18, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0635, by one of the following methods:

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

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of Wednesday, November 7, 2012 (77 FR 66781) (FRL–9367–5), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8064) by Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.628 be amended by establishing tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-N-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on cereal grain group 15, except rice at 6.0 parts per million (ppm); grain, cereal, forage, fodder and straw, group 16 at 30.0 ppm; fruit, citrus, group 10–10 at 1.4 ppm; and fruit, pome, group 11–10 at 1.2 ppm. In addition, petition 2E8064 proposed, upon approval of above tolerances, to remove established tolerances in or on the raw agricultural commodities/groups: Mayhaw at 0.6 ppm; field corn forage, field corn stover, pop corn forage, pop corn stover, sweet corn forage, sweet corn stover at 14 ppm; field corn grain, pop corn grain at 0.04 ppm; sweet corn kernels plus cob with husk removed at 0.02 ppm; field corn milled byproducts at 0.1 ppm; citrus fruit group 10 at 1.4 ppm; and pome fruit group 11 except mayhaw at 1.2 ppm. That document referenced a summary of the petition prepared by E. I. DuPont de Nemours and Company, DuPont Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified, removed and/or established chlorantraniliprole tolerances for certain commodities. The reasons for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as

well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

No mutagenicity concerns were reported in the genotoxicity studies. Nor does chlorantraniliprole exhibit immunotoxicity, neurotoxicity, carcinogenicity, or developmental toxicity.

In oral and dermal toxicity studies in rats, minimally increased microvesiculation of adrenal cortex was observed in males only; however, supporting data demonstrated no effect on the capacity of the adrenal gland to produce corticosterone under either basal or following adrenocorticotropic hormone (ACTH) stimulation. Therefore, adrenal cortex effects observed in rat studies were not considered adverse.

Chlorantraniliprole does not exhibit pre- or postnatal toxicity as there were no maternal or fetal effects in studies conducted in rats and rabbits. The relative absence of mammalian hazard may be due in part to chlorantranilprole's selectivity for insect ryanodine receptor (RyR) over mammalian counterparts. In short-term studies, the most consistent effects are those associated with non-adverse pharmacological response to the xenobiotic, induction of liver enzymes and subsequent increase in liver weights.

Chlorantraniliprole is classified as ''Not likely to be Carcinogenic to Humans'' based on the weight of evidence of data: No treatment-related tumors were reported in the submitted chronic and oncogenicity studies in rats and mice (18-month carcinogenicity study) or in the subchronic studies in mice, dogs and rats.

Specific information on the studies received and the nature of the adverse effects caused by chlorantraniliprole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Chlorantraniliprole: Human Health Risk Assessment for Proposed Uses on Cereal Grains Group 15 (except Rice) and Cereal Grains Forage, Fodder, and Straw Group 16, and Conversion of Citrus and Pome Fruit Groups,'' dated May 12, 2013 at p.25 in docket ID number EPA–HQ–OPP–2012–0635–0005.

*B. Toxicological Points of Departure/Levels of Concern*

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

A summary of the toxicological endpoints for chlorantraniliprole used for human risk assessment is discussed in Unit III.B of the final rule published in the **Federal Register** of July 27, 2011 (76 FR 44815) (FRL–8875–5).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to chlorantraniliprole, EPA considered exposure under the petitioned-for tolerances as well as all existing chlorantraniliprole tolerances in 40 CFR 180.628. EPA assessed dietary exposures from chlorantraniliprole in food as follows:

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

No such effects were identified in the toxicological studies for chlorantraniliprole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEA). As to residue levels in food, EPA assumed tolerance levels residues for the proposed and registered crops, and assumed 100 percent crop treated (PCT). Where processing data indicated a reduction (or no increase) in residue upon processing, the residue level of the raw agricultural commodity (RAC) was used without reduction, for example mint oil from spearmint. Where processing data indicated an increase in residue in the processed commodity, tolerance-level residues based on tolerances established for those commodities were used, e.g., raisins from grapes. Where adequate processing data did not exist, Dietary Risk Evaluation System (DEEM) default concentration factors were used if available.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that chlorantraniliprole does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for chlorantraniliprole. Tolerance level residues and 100 PCT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of chlorantraniliprole for chronic exposures for non-cancer assessments are estimated to be 39.87 ppb for surface water and 0.842 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. No acute dietary risk assessment was

performed because no acute hazard was identified. For chronic dietary risk assessment, the water concentration value of 39.87 ppb was used to assess the contribution to drinking water.

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

Chlorantraniliprole is currently registered for the following uses that could result in residential exposures: Termiticide, sod farms/turf, landscape ornamentals and interiorscapes. Residential exposure is expected to occur for short-term and intermediate-term durations; however, due to the lack of toxicity identified for short- and intermediate-term durations via relevant routes of exposure, residential exposure was not assessed. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

### *D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity.* There were no effects on prenatal fetal growth or postnatal development up to the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day) in rats or rabbits in the development or 2-generation reproduction studies. Moreover, there were no treatment related effects on the numbers of litters, fetuses (live or dead), resorptions, sex ratio, or post-implantation loss. There were no effects on fetal body weights, skeletal ossification, and external, visceral, or skeletal malformations or variations.

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

i. The toxicity database for chlorantraniliprole is complete.

ii. There is no indication that chlorantraniliprole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

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

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary assessment utilized tolerance level residues for all crops and assumed 100 PCT of the proposed and registered crops were treated with chlorantraniliprole. Default processing factors were used as appropriate. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to chlorantraniliprole in drinking water. Moreover, there is a lack of toxicity via the dermal route, as well as the lack of toxicity over the acute-, short- and intermediate-term via the oral route. These assessments will not underestimate the exposure and risks posed by chlorantraniliprole.

### *E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, chlorantraniliprole is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlorantraniliprole from food and water will utilize 6.3% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of chlorantraniliprole is not expected.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposures take into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no short-term or intermediate-term adverse effects were identified, the aggregate short-term or intermediate-term risk is the same as the dietary risk, which will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, chlorantraniliprole is not expected to pose a cancer risk to humans.

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

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography mass spectrometry (LC/MS/MS)); Method DuPont-11374) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

*B. International Residue Limits*

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

Codex has established chlorantraniliprole maximum residue limits (MRLs) for a number of crop and animal commodities. The Codex MRLs for cereal grains, citrus fruit, and pome fruit are significantly lower than the recommended corresponding US tolerances. Because the permitted domestic use on these crops in accordance with the approved pesticide label results in residue levels higher than the Codex MRLs, the US tolerance cannot be harmonized (lowered) since doing so would result in residues in excess of the approved tolerance in spite of use consistent with label directions. Because the US tolerances for cereal grains are higher than the Codex MRLs for cereal grains, the US livestock tolerances at the values recommended are necessary to encompass possible residue levels from use of the pesticide according to label directions.

*C. Revisions to Petitioned-for Tolerances*

EPA converted, modified, removed and/or established chlorantraniliprole tolerances for certain commodities and, in some cases, re-defined the crop group tolerance expression and/or corrected the commodity definition, as needed.

EPA determined that the proposed tolerance for grain, cereal, group 15, except rice at 6.0 ppm is not appropriate. Establishing the proposed tolerance would raise tolerance levels for corn, field, grain; corn, pop, grain, and corn, sweet, kernel plus cobs with husk removed much in excess of their actual residue levels: corn, field, grain and corn, pop, grain at 0.04 ppm and corn, sweet, kernel plus cobs with husk removed at 0.02 ppm. Therefore, the Agency determined that the grain, cereal, group 15 tolerance must exclude corn (including corn, field, grain; corn, pop, grain; and corn, sweet), and re-defined the crop group tolerance expression as ''grain, cereal, group 15, except rice and corn'' at 6.0 ppm. Accordingly, although the petitioner requested the removal of the established tolerances for corn, field, grain at 0.04 ppm and corn, pop, grain at 0.04 ppm and field corn milled byproducts at 0.1 ppm because they would be subsumed within the proposed tolerance for grain, cereal, group 15, EPA is not leaving those tolerances in place.

Based on field trial data and using the Organization of Economic Cooperation and Development (OECD) tolerance calculation procedures, EPA determined that the proposed tolerance on grain, cereal, forage, fodder, and straw, group 16 at 30 ppm should be increased 40 ppm.

Upon the establishment of fruit, pome, group 11–10, the petitioner proposed that the tolerance for fruit, pome, group 11 and mayhaw, be deleted. The existing tolerance is for fruit, pome, group 11, except mayhaw at 1.2 ppm and there is a separate tolerance for mayhaw at 0.6 ppm. These two tolerances will now be superseded by establishment of the group tolerance ''fruit, pome, group 11–10'' at 1.2 ppm.

The tolerances for certain livestock commodities were created or increased because expanded use of chlorantraniliprole to more cereal grains and cereal grain forages, fodders, and straws increased the dietary exposure of livestock. The increased dietary exposure of livestock necessitates increased tolerances for cattle, sheep, horse, and goat meat byproducts from 0.2 ppm to 0.5 ppm and for milk from −0.05 ppm to 0.1 ppm. Due to elevated hog dietary exposure from the crop group tolerance for grain, cereal, group 15, EPA established a hog, meat tolerance at 0.02 ppm and increased both the hog, fat and the hog, meat byproducts tolerance from 0.02 to 0.05 ppm. Likewise, the grain, cereal, group 15 elevated the laying hen dietary exposure and, consequently, the Agency set a tolerance for poultry, meat at 0.05 ppm and increased the tolerance for egg from 0.2 to 1.0 ppm; poultry, fat from 0.01 to 0.2 ppm; and poultry, meat byproducts from 0.02 to 0.2 ppm. In accordance with the Agency commodity terminology, EPA is re-defining existing animal ''meat byproducts, except liver'' tolerances to ''meat byproducts'', which includes liver. Thus, EPA is deleting separate tolerances for goat, liver, horse, liver, and sheep, liver since they are covered by the respective meat byproducts tolerances.

Lastly, at 180.628(d), the Agency removed the entry for commodity ''Grain, cereal, forage, fodder and straw, group 16 at 0.20 ppm, with expiration/revocation date of 04/10/14, as this time-limited tolerance is superseded by this action.

## V. Conclusion

Therefore, tolerances are established for residues of chlorantraniliprole, 3-bromo-N-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on Cattle, meat byproducts at 0.5 parts per million (ppm); Egg at 1.0 ppm; Fruit, citrus, group 10–10 at 1.4 ppm; Fruit, pome, group 11–10 at 1.2 ppm; Goat, meat byproducts at 0.5 ppm; Grain, cereal, group 15, except rice and corn at 6.0 ppm; Grain, cereal, forage, fodder and straw, group 16 at 40.0 ppm; Hog, fat at 0.05 ppm; Hog, meat at 0.02 ppm; Hog, meat byproducts at 0.05 ppm; Horse, meat byproducts at 0.5 ppm; Milk at 0.1 ppm; Poultry, fat at 0.2 ppm; Poultry, meat at 0.05 ppm; Poultry, meat byproducts at 0.2 ppm; and Sheep, meat byproducts at 0.5 ppm.

## VI. Statutory and Executive Order Reviews

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

Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: September 9, 2013.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

### § 180.628 [Amended]

■ 2. Section 180.628, the table in paragraph (a), is amended as follows:

■ i. Remove the following commodities: ''Cattle, liver''; ''Cattle, meat byproducts, except liver''; ''Corn, field forage''; ''Corn, field, stover''; ''Corn, pop, forage''; ''Corn, pop, stover''; ''Corn, sweet, forage''; ''Corn, sweet, stover''; ''Fruit, citrus group 10''; ''Fruit, pome group 11, except mayhaw''; ''Goat, liver''; ''Goat, meat byproducts, except liver''; ''Horse, liver''; ''Horse, meat byproducts, except liver''; ''Mayhaw''; ''Sheep, liver''; and ''Sheep, meat byproducts, except liver.''

■ ii. Revise the following commodities: ''Egg''; ''Hog, fat''; ''Hog, meat byproducts''; ''Milk''; ''Poultry, fat''; and ''Poultry, meat byproducts.''

■ iii. Add alphabetically the commodities: ''Cattle, meat byproducts''; ''Fruit, citrus, group 10–10''; ''Fruit, pome, group 11–10''; ''Goat, meat byproducts''; ''Grain, cereal, except rice and corn, group 15''; ''Grain, cereal, forage, fodder and straw, group 16''; ''Hog, meat''; ''Horse, meat byproducts''; Poultry, meat''; and ''Sheep, meat byproducts.''

■ 3. Section 180.628, the table in paragraph (d) is amended by removing the entry ''Grain, cereal, forage, fodder and straw, group 16.''

The additions and revisions read as follows:

### § 180.628 Chlorantraniliprole; tolerances for residues.

(a) *General.* * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cattle, meat byproducts | 0.5 |
| * * * * * | |
| Fruit, citrus, group 10–10 | 1.4 |
| Fruit, pome, group 11–10 | 1.2 |
| * * * * * | |
| Goat, meat byproducts | 0.5 |
| * * * * * | |
| Grain, cereal, except rice and corn, group 15 | 6.0 |
| Grain, cereal, forage, fodder and straw, group 16 | 40 |
| * * * * * | |
| Hog, fat | 0.05 |
| Hog, meat | 0.02 |
| Hog, meat byproducts | 0.05 |
| * * * * * | |
| Horse, meat byproducts | 0.5 |
| * * * * * | |
| Milk | 0.1 |
| * * * * * | |
| Poultry, fat | 0.2 |
| Poultry, meat | 0.05 |
| Poultry, meat byproducts | 0.2 |
| * * * * * | |
| Sheep meat byproducts | 0.5 |
| * * * * * | |

* * * * *

[FR Doc. 2013–22593 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2013–0383; FRL–9398–4]**

### 2,5-Furandione, Polymer With Ethenylbenzene, Hydrolyzed, 3-(Dimethylamino)propyl Imide, Imide With Polyethylene-Polypropylene Glycol 2-Aminopropyl Me Ether, 2,2′-(1,2-Diazenediyl)bis[2-Methylbutanenitrile]-Initiated; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated (CAS Reg. No. 1062609–13–5) when used as an inert ingredient in a pesticide formulation. Evonik Goldschmidt Corporation (Evonik) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-

(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated on food or feed commodities.

**DATES:** This regulation is effective September 18, 2013. Objections and requests for hearings must be received on or before November 18, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0383, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0383 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 18, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0383, by one of the following methods.

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

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

## II. Background and Statutory Findings

In the **Federal Register** of July 19, 2013 (78 FR 43115) (FRL–9392–9), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (IN–10559) filed by Evonik Goldschmidt Corporation, P.O. Box 1299, 914 East Randolph Rd. Hopewell, VA 23860. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated; CAS Reg. No. 1062609–13–5. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received one comment.

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

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no

harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d) for 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

8. The polymer's number average MW of 5,816 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated is 5,816 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated to share a common mechanism of toxicity with any other substances, and 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl iide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

**VII. Determination of Safety**

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated.

**VIII. Other Considerations**

*A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

*B. International Residue Limits*

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

The Codex has not established a MRL for 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated.

*C. Response to Comments*

The one comment received was an anonymous public comment regarding the acceptability of the polymer under 40 CFR 180.960 and whether it met the 40 CFR 723.250 low risk polymer exemption. The comment stated, ''When DMAPA (dimentylaminopropyl amine) is reacted into the polymer to form the imide, that leaves a tertiary amine (dimethylpropyl amine) that can be protonated to become cationic when dispersed in water. If there are more than one of these DMAPAs per polymer molecule the equivalent weight will be below the 5,000 amu required to meet 40 CFR 723.250 low risk polymer exemption from both TSCA and to get approval on 40 CFR 180.960.'' While this polymer does contain a tertiary amine functional group, the functional group equivalent weight is greater than 5,000 daltons. Therefore, this polymer is a cationic polymer of low cationic density and not excluded from the polymer exemption criteria given at 40 CFR 723.250(d).

**IX. Conclusion**

Accordingly, EPA finds that exempting residues of 2,5-furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated from the requirement of a tolerance will be safe.

**X. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

Although this action does not require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

**XI. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

**Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: September 9, 2013.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.960, alphabetically add the following polymer to the table to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * * * * | |
| 2,5-Furandione, polymer with ethenylbenzene, hydrolyzed, 3-(dimethylamino)propyl imide, imide with polyethylene-polypropylene glycol 2-aminopropyl me ether, 2,2′-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated, minimum number average molecular weight (in amu), 5,816 | 1062609–13–5 |
| * * * * * * * | |

[FR Doc. 2013–22601 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2012–0441; FRL–9396–7]**

### Difenzoquat; Denial of Objections

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Order.

**SUMMARY:** In this Denial of Objections Order, EPA is denying the objections submitted by Amvac Chemical Corporation (AMVAC) to a Revocation Order EPA issued in May 2013 under the Federal Food, Drug, and Cosmetic Act (FFDCA) revoking all tolerances for the pesticide difenzoquat. EPA revoked the tolerances, consistent with the terms of a previously issued Data Call-In Order, because no notices of intent to submit the required data were submitted, as directed by that Data Call-In Order. In its objections, AMVAC requested that EPA delay the effective date for revoking the difenzoquat tolerances for 4½ years to allow for importation of food commodities that will be treated with the pesticide in Canada over the next 2 years. EPA denies AMVAC's objections because AMVAC has not filed a proper objection to the Revocation Order.

**DATES:** This order is effective September 18, 2013.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0441, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

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

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

### II. Introduction

*A. What action is the agency taking?*

In this Denial of Objections Order, EPA is denying the objections submitted by AMVAC to a Revocation Order issued by EPA in the **Federal Register** of May 29, 2013 (Ref. 1), in which EPA ordered the revocation of all tolerances for the pesticide difenzoquat under FFDCA section 408, 21 U.S.C. 346a. EPA revoked the tolerances, consistent with the terms of a previously issued Data Call-In Order (Ref. 2), because no notices of intent to submit the required data were received by EPA as directed by that Data Call-In Order. In its objections (Ref. 3), AMVAC requested that EPA delay the effective date for the revocation of the difenzoquat tolerances for 4½ years to allow for importation of food commodities that will be treated with the pesticide in Canada over the next 2 years. EPA denies AMVAC's objections because AMVAC has not filed a proper objection to the Revocation Order. The AMVAC objections are discussed in Unit IV., and EPA's denial is discussed in Unit V.

*B. What is the agency's authority for taking this action?*

The procedure for filing objections to tolerance actions and EPA's authority for acting on such objections is contained in FFDCA section 408(g), 21 U.S.C. 346a(g), and 40 CFR part 178. For orders issued under FFDCA section 408(f)(2), the only material issue for consideration is whether a submission required under a FFDCA section 408(f)(1)(C) order was made by the time specified in that FFDCA section 408(f)(1)(C) order. 21 U.S.C. 346a(f)(2).

## III. Background

### *A. Statutory Background*

1. *In general.* EPA regulates the use of pesticides under the authority of two Federal statutes: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, and FFDCA, 21 U.S.C. 346a. FIFRA provides the basis for the regulation, sale, distribution, and use of pesticides in the United States, and authorizes EPA to review and register pesticides for specified uses. EPA also has the authority to suspend or cancel the registration of a pesticide if subsequent information shows that continued use would pose unreasonable risks. EPA establishes maximum residue limits, or ''tolerances,'' for pesticide residues in food under FFDCA section 408. Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under FFDCA section 402 and may not be legally moved in interstate commerce. 21 U.S.C. 331 and 342. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture.

2. *Safety standard for pesticide tolerances.* A pesticide tolerance may only be promulgated by EPA if the tolerance is ''safe.'' 21 U.S.C. 346a(b)(2)(A)(i). ''Safe'' is defined by the statute to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' 21 U.S.C. 346a(b)(2)(A)(ii). Section 408 of FFDCA directs EPA, in making a safety determination, to ''consider, among other relevant factors . . . available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources.'' 21 U.S.C. 346a(b)(2)(D)(vi).

3. *Data required for supporting tolerances.* In determining whether to establish, modify, or revoke a tolerance, EPA considers data to evaluate whether that tolerance meets the FFDCA safety standard. Generally, these data are provided in support of an application for registration of a pesticide under FIFRA, and a petition to establish a pesticide tolerance under FFDCA. If additional data are needed for an existing tolerance, EPA's first recourse is to use the broad data call-in authority in FIFRA section 3(c)(2)(B), 7 U.S.C. 136a(c)(2)(B). In some situations where there is no domestic pesticide registration and data cannot be obtained under the data call-in authority of FIFRA section 3(c)(2)(B), or section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, FFDCA section 408(f)(1)(C) authorizes EPA to require, by order, submission of data ''reasonably required to support the continuation of a tolerance. . . .'' 21 U.S.C. 346a(f).

Under FFDCA section 408(f)(1)(C), EPA can issue a data call-in order following notice and a comment period of not less than 60 days. 21 U.S.C. 346a(f)(1)(C). After the comment period closes, the Agency will respond to comments, if appropriate, and may issue a final order requiring the data necessary to support the continuation of a tolerance. Section 408(f)(1)(C) of FFDCA requires that a data call-in order contain the following elements:

i. A requirement that one or more persons submit to EPA a notice identifying the person(s) who commit to submit the data required in the order and the date by which such notice(s) must be submitted.

ii. A description of the data necessary to support the tolerance, reports connected to such data, a requirement to submit such data and reports, and the date(s) by which such data and reports must be submitted.

iii. An explanation of why the required data could not be obtained under FIFRA section 3(c)(2)(B) or TSCA section 4.

If EPA issues a FFDCA section 408(f)(1)(C) data call-in order and any submission required by that order is not made by the time specified in that order, EPA may revoke, by order published in the **Federal Register**, the tolerance that is the subject of that data call-in order. 21 U.S.C. 346a(f)(2). Such revocation order is subject to the objection and hearing procedure in FFDCA section 408(g)(2), but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

4. *Procedures for objections.* Upon issuing an order under FFDCA section 408(f)(2), any affected party has 60 days to file objections with EPA and seek an evidentiary hearing on those objections. 21 U.S.C. 346a(g)(2). For FFDCA section 408(f)(2) orders, the only material issue for review of such order is whether a submission required by the order was made by the time specified in the FFDCA section 408(f)(1)(C) order.

5. *Channels of trade provision for revoked tolerances.* The FFDCA specifically addresses the legality of pesticide residues entering or remaining in the channels of trade following revocation of the associated tolerance. 21 U.S.C. 346a(l)(5). Under FFDCA section 408(l)(5), any residues of the pesticide in or on such food does not render the food adulterated so long as it is shown to the satisfaction of FDA that:

i. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

ii. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

### *B. Regulatory Background*

1. *Difenzoquat tolerances.* Difenzoquat is a herbicide that was previously registered under FIFRA for sale and distribution in the United States. The last FIFRA registration was canceled in 2010, although tolerances remained for this pesticide on the following commodities: Barley, cattle, goat, hog, horse, poultry, sheep, and wheat (40 CFR 180.369). In August 2011, in response to AMVAC's interest in maintaining the difenzoquat tolerances for import purposes, the Agency completed a screening-level evaluation for difenzoquat (Screening-Level Memorandum) (Ref. 4). As there are no domestic registrations for difenzoquat products, the evaluation was limited to the potential dietary risk from exposure to difenzoquat residues in imported food commodities. The evaluation concluded that, in order to determine whether it was appropriate to continue the tolerances, additional data—a neurotoxicity battery; an immunotoxicity study; and residue data for barley hay, wheat forage, and wheat hay—were needed to conduct a new dietary risk assessment on exposure from imported food commodities. The neurotoxicity battery and immunotoxicity study were required in accordance with the data requirements rule, which was updated in 2007 to add these tests (Ref. 5). In addition, EPA required, consistent with its guidance on applying U.S. data requirements to import tolerances (Ref. 6), that field trial data on crops mentioned in this unit be conducted at the maximum application rates and in the countries where the pesticide would be used so that EPA could evaluate what level of residues

may be present on imported treated food commodities (Ref. 4, p. 6).

2. *EPA's FFDCA section 408(f) Data Call-In Order.* On July 6, 2012, EPA issued in the **Federal Register** a proposed Data Call-In Order under FFDCA section 408(f)(1), 21 U.S.C. 346a(f)(1), proposing to require the submission of data for the pesticide difenzoquat to support the continuation of tolerances associated with that pesticide (Ref. 7). The proposed Data Call-In Order identified the following studies for submission as reasonably required to support the difenzoquat tolerances: Neurotoxicity screening battery (OPPTS 870.6200) (Ref. 8); immunotoxicity study (OPPTS 870.7800) (Ref. 9); and crop field trials (OPPTS 860.1500) (Ref. 10) for barley hay, wheat forage, and wheat hay (Ref. 7, p. 39964). The proposed Data Call-In Order explained, in accordance with the statutory requirements, why the data could not be obtained under FIFRA section 3(c)(2)(B) or TSCA section 4. In addition, the proposed Data Call-In Order proposed dates for submission of the data and related reports. Finally, the proposed Data Call-In Order requested comment by September 4, 2012. EPA received no comments in response to the proposed Data Call-In Order and issued a final Data Call-In Order in the **Federal Register** on December 19, 2012 (Ref. 2). Consistent with the proposed Data Call-In Order and statutory obligations, the final Data Call-In Order included the following elements:

- EPA required that any person who wishes to support the difenzoquat tolerances must submit a notice identifying that person or persons who commit to submit the data and reports in accordance with the terms of the final Data Call-In Order. EPA explained that the notice must be submitted on a Data Call-In Response form, how to obtain that form, and that the deadline for submitting that form was March 19, 2013.
- EPA described the data and reports that were required to support the continuation of the difenzoquat tolerances and required them to be submitted by certain dates.
- EPA explained that it would proceed to revoke the difenzoquat tolerances at 40 CFR 180.369 under FFDCA section 408(f) if it did not receive by March 19, 2013, a Data Call-In Response form identifying the person or persons who commit to submit the required data and reports.

3. *International notification of EPA's FFDCA section 408(f) Data Call-In Order.* Shortly after publishing the proposed Data Call-In Order, EPA notified the World Trade Organization of the proposed order pursuant to its obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures, January 1, 1995 (Refs. 11 and 12). The U.S. notification, which referenced and included a link to the proposed Data Call-In Order (Ref. 7), alerted potential U.S. trading partners to EPA's need for data to support the continuation of the difenzoquat tolerances and that if no notices of intent to submit such data were received by the Agency by March 19, 2013, EPA would proceed to revoke the difenzoquat tolerances, which would prohibit the export to the United States of food commodities bearing difenzoquat residues that did not qualify under the channels of trade provision (Ref. 12).

4. *EPA's FFDCA section 408(f) Revocation Order.* Subsequent to the issuance of the final Data Call-In Order, EPA received no submissions of the Data Call-In Response form within the required 90-day period. Therefore, in the **Federal Register** on May 29, 2013 (Ref. 1), EPA issued an order revoking all difenzoquat tolerances (Revocation Order) in accordance with the terms of its final Data Call-In Order and FFDCA section 408(f)(2), which allows EPA to revoke by order any tolerances that are the subject of a final Data Call-In Order for which a submission required by that final Data Call-In Order is not received by the date specified in that order. The Revocation Order was effective upon the date of publication in the **Federal Register**, which means that food commodities bearing difenzoquat residues after May 29, 2013, are considered adulterated unless the commodities qualified under the channels of trade provision. The Revocation Order explained that it was subject to the objection and hearing procedure in FFDCA section 408(g)(2) and that the only material issue for review of the Revocation Order was whether a submission required by the final Data Call-In Order was made in a timely fashion. The Revocation Order established July 29, 2013, as the date by which objections must be received by the Agency.

## IV. AMVAC's Objections

On June 24, 2013, AMVAC submitted its formal objections to the Revocation Order. See AMVAC Objections (Ref. 3). Rather than actually challenging the revocation itself, AMVAC submitted its objections solely for the ''purpose of . . . seek[ing] an extension of the effective date of the revocation. . . .'' AMVAC makes two specific objections to the timing of the Revocation Order. First, citing to its recent shipment of difenzoquat to Canadian growers for use through 2015, AMVAC argues that ''insufficient time has been afforded to foreign growers that continue to rely on these tolerances.'' Second, AMVAC asserts that immediate revocation, or even revocation in 2015, is unrealistic because the FFDCA channels of trade provision is ''unworkable in practice.'' In support of this latter claim, AMVAC claims that barley and wheat, two crops covered by difenzoquat tolerances, ''may be stored for a protracted period and that treated grain might also be intermingled with untreated grain while in storage.'' These factors, AMVAC asserts, make it ''difficult, if not impossible, to provide the information concerning the time that these crops were treated, which EPA requires as a means of providing evidence that the food was lawfully treated.'' Based on its expectation that difenzoquat will be used in Canada through 2015 and the alleged unworkability of the FFDCA channels of trade provision, AMVAC requests an extension of the revocation date until December 31, 2017.

AMVAC concedes that it did not raise these concerns by commenting on the proposed Data Call-In Order or responding to the final Data Call-In Order within the time periods provided. Further, AMVAC does not assert that it submitted any Data Call-In Response form indicating its intent to submit the required data by the date specified in the final Data Call-In Order.

## V. EPA's Response to AMVAC's Objections

EPA denies AMVAC's objections because AMVAC has not filed a proper objection to the Revocation Order. Section 408(f)(2) of FFDCA restricts the substance of objections the Agency may consider in reviewing an order issued under FFDCA section 408(f)(1) to the following limited issue: ''Whether a submission required under [an order issued under 408(f)(1)(C)] was not made by the time specified.'' 21 U.S.C. 346a(f)(2). In its objections, AMVAC does not contend that it made a timely submission of a notice of intent to submit data, made any submission of data, or intends to submit any required data as specified in the final Data Call-In Order. Rather, AMVAC concedes that it overlooked the notices and did not submit any comments on the proposed Data Call-In Order nor any response to the final Data Call-In Order. In addition, AMVAC does not disagree with the revocation of the tolerances, just to the timing of the effectiveness of the Revocation Order. Because AMVAC has not argued that ''a submission required [by the final Data Call-In Order] was [

] made by the time specified,'' see 21 U.S.C. 346a(f)(2), its objections do not provide a proper basis for review of the Revocation Order under FFDCA section 408(f)(2).

AMVAC's arguments concerning the need for additional time for Canadian farmers to use their recently purchased difenzoquat stocks and to simplify enforcement of the channels of trade provision are, by law, simply not relevant at this stage of the revocation proceeding under FFDCA section 408(f)(2). AMVAC or other interested parties had two opportunities to raise such concerns when EPA issued the proposed Data Call-In Order and when it issued the final Data Call-In Order. At this point, it would be advisable for Canadian farmers who have used difenzoquat prior to the revocation date of the tolerance to document the timing of that usage to show compliance with the FFDCA's channels of trade provision. EPA has alerted FDA, which monitors pesticide residues in imported food, of the possibility that food qualifying under the channels of trade provision may be entering the country and will work with FDA to ensure that this provision is applied properly. Going forward, if Canadian farmers choose to use difenzoquat, they—like any foreign grower who uses a pesticide for which there is no U.S. tolerance—will need to take steps to ensure that commodities they produce that are treated with and contain residues of difenzoquat are segregated from commodities intended for export to the United States.

## VI. Statutory and Executive Order Reviews

This action, which denies an objection to a Revocation Order, is an adjudication in the form of an order and not a rule. 21 U.S.C. 346a(g)(2)(C). Under the Administrative Procedure Act (APA), orders are expressly excluded from the definition of a rule. 5 U.S.C. 551(4). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this action, as explained further in the following discussion.

- Because this order is not a ''regulatory action'' as that term is defined in Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this order is not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011).
- For the same reason, this order does not require Agency considerations under Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); and Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).
- This order does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).
- Since this order is not a rule under the APA (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.
- This order does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this order will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538).
- This order does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).
- The Congressional Review Act (5 U.S.C. 801 *et seq.*), does not apply to this order because it is not a rule for purposes of 5 U.S.C. 804(3).

## VII. References

The following is a listing of the documents that are specifically referenced in this order. The docket for this order, which is identified under **ADDRESSES** at the beginning of this document, includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.


1. EPA. Difenzoquat; Order Revoking Tolerances; Revocation order. **Federal Register** (78 FR 32155, May 29, 2013) (FRL–9386–5).
2. EPA. Difenzoquat; Data Call-in Order for Pesticide Tolerances; Final order. **Federal Register** (77 FR 75037, December 19, 2012) (FRL–9372–9).
3. AMVAC. EPA–HQ–OPP–2012–0441: Objection to Order Revoking Difenzoquat Tolerances. June 24, 2013.
4. Memorandum from Susan Hummel (OPP) to Eric Miederhoff (OPP). Difenzoquat Methyl Sulfate: Human Health Screening Level Document for Maintaining Tolerances for Import Use. August 11, 2011.
5. EPA. Pesticides; Data Requirements for Conventional Chemicals; Final rule. **Federal Register** (72 FR 60934, October 26, 2007) (FRL–8106–5).
6. EPA. Pesticides; Guidance on Pesticide Import Tolerances and Residue Data for Imported Food; Request for Comment; Notice. **Federal Register** (65 FR 35069, June 1, 2000) (FRL–6559–3).
7. EPA. Difenzoquat; Proposed Data Call-in Order for Pesticide Tolerance; Proposed order. **Federal Register** (77 FR 39962, July 6, 2012) (FRL–9352–9).
8. EPA. Health Effects Test Guidelines: OPPTS 870.6200 Neurotoxicity Screening Battery. EPA 712–C–98–238. Available at *http://www.regulations.gov.*
9. EPA. Health Effects Test Guidelines: OPPTS 870.7800 Immunotoxicity. EPA 712–C–98–351. Available at *http://www.regulations.gov.*
10. EPA. Residue Chemistry Test Guidelines: OPPTS 860.1500 Crop Field Trials. EPA 712–C–96–183. Available at *http://www.regulations.gov.*
11. Agreement on the Application of Sanitary and Phytosanitary Measures, January 1, 1995. 1867 U.N.T.S. 493.
12. United States. Notification. G/SPS/N/USA/2421. July 16, 2012.


## List of Subjects in 40 CFR Part 180

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

Dated: September 5, 2013.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2013–22603 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 7

**[Docket No. CDC–2013–0013]**

**RIN 0920–AA52**

### Distribution of Reference Biological Standards and Biological Preparations

**AGENCY:** Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

**ACTION:** Confirmation of effective date of direct final rule.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) is publishing this document to confirm the effective date of the Direct Final Rule (DFR), published on July 22, 2013 (78 FR 43817).

**DATES:** The Direct Final Rule published at 78 FR 43817, July 22, 2013, will become effective on September 20, 2013.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this document: Dr. Carolyn M. Black, M.D., Division of Scientific Resources, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop C–17, Atlanta, Georgia 30333; telephone 404–639–3466.

**SUPPLEMENTARY INFORMATION:** On July 22, 2013, HHS/CDC published a Direct Final Rule (DFR) amending 42 CFR part 7 to update the agency name, address, and contact information for that part (78 FR 43817. In that document, HHS/CDC indicated that if we did not receive any significant adverse comments on the direct final rule by August 21, 2013, we would publish a document in the **Federal Register** confirming the effective date of the direct final rule within 30 days after the end of the comment period. HHS/CDC did not receive significant adverse comment to the DFR. Therefore, consistent with the Direct Final Rule, the updated agency name and address and contact information for 42 CFR part 7 will become effective on September 20, 2013 (78 FR 43817).

Dated: September 11, 2013.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. 2013–22685 Filed 9–17–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Part 447

**[CMS–2367–F]**

**RIN 0938–AR31**

### Medicaid Program; State Disproportionate Share Hospital Allotment Reductions

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** The statute, as amended by the Affordable Care Act, requires aggregate reductions to state Medicaid Disproportionate Share Hospital (DSH) allotments annually from fiscal year (FY) 2014 through FY 2020. This final rule delineates a methodology to implement the annual reductions for FY 2014 and FY 2015. The rule also includes additional DSH reporting requirements for use in implementing the DSH health reform methodology.

**DATES:** *Effective Date:* These regulations are effective on November 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Rory Howe, (410) 786–4878; or Richard Strauss, (410) 786–2019.

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

*A. Purpose*

The statute as amended by the Affordable Care Act sets forth aggregate reductions to state Medicaid disproportionate share hospital (DSH) allotments annually from fiscal year (FY) 2014 through FY 2020. This final rule delineates the DSH Health Reform Methodology (DHRM) to implement the annual reductions for FY 2014 and FY 2015.

*B. Summary of the Major Provisions*

The statute as amended by the Affordable Care Act directs the Secretary to implement the annual DSH allotment reductions using a DHRM. This rule amends part 447 by establishing the DHRM. The DHRM incorporates five factors identified in the statute.

*C. Costs and Benefits*

Taking these five factors into account for each state, the DHRM will generate a state-specific DSH allotment reduction amount for FY 2014 and FY 2015. The total of all DSH allotment reduction amounts will equal the aggregate annual reduction amounts identified in the statute for FY 2014 and FY 2015. To determine the effective annual DSH allotment for each state, the state-specific annual DSH allotment reduction amount will be applied to the unreduced DSH allotment amount for its respective state.

## II. Background

*A. Introduction*

As a result of the Affordable Care Act, millions of Americans will have access to health insurance coverage through qualified health plans offered through Health Insurance Exchanges (also called Marketplaces) or through Medicaid and Children's Health Insurance Program. This increase in the number of individuals having access to health insurance is expected to significantly reduce levels of uncompensated care provided by hospitals.

On the assumption that the number of uninsured people will fall sharply beginning in 2014, the statute reforms an existing Medicaid payment program for hospitals which serve a disproportionate share of low income patients, and therefore, may have uncompensated care costs. Under sections 1902(a)(13)(A)(iv) and 1923 of the Social Security Act (the Act), states are required to make payments to qualifying ''disproportionate share'' hospitals (DSH payments). Section 2551 of the Affordable Care Act amended section 1923(f) of the Act, by adding paragraph (7), to provide for aggregate reductions in federal funding under the Medicaid program for such DSH payments for the 50 states and the District of Columbia. This reform of the DSH payment authority is consistent with the reduction of uncompensated care costs (particularly those associated with the uninsured) expected to result from the expansion of coverage under the statute.

Section 1923(f)(7)(A)(i) of the Act requires that the Secretary of Health and Human Services (the Secretary) implement the aggregate reductions in federal funding for DSH payments through reductions in annual state allotments of federal funding for DSH payments (state DSH allotments), and accompanying reductions in payments to each state. The amount of federal funding for DSH payments for each state is limited to an annual state DSH allotment in accordance with section 1923(f) of the Act. Section 1923(f)(7) of the Act requires the use of a DHRM to determine the percentage reduction in each annual state DSH allotment to achieve the required aggregate annual reduction in federal DSH funding.

Section 1923(f)(7)(B) establishes the following five factors that must be considered in the development of the DHRM. The methodology must:

- Impose a smaller percentage reduction on low DSH states.
- Impose larger percentage reductions on states that have the lowest percentages of uninsured individuals during the most recent year for which such data are available.
- Impose larger percentage reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients.
- Impose larger percentage reductions on states that do not target their DSH payments on hospitals with high levels of uncompensated care.
- Take into account the extent to which the DSH allotment for a state was included in the budget neutrality calculation for a coverage expansion approved under section 1115 as of July 31, 2009.

The statutory provision for each factor contains explicit principles, described below, to apply when calculating the annual DSH allotment reduction amounts for each state through the DHRM.

*B. Legislative History and Overview*

The Omnibus Budget Reconciliation Act of 1981(OBRA'81) (Pub. L. 97–35, enacted on August 31, 1981) amended section 1902(a)(13) of the Act to require that Medicaid payment rates for hospitals ''take into account the situation of hospitals that serve a disproportionate share of low-income patients with special needs.'' Over the more than 30 years since this requirement was first enacted, the Congress has set forth in section 1923 of the Act policies, payment targets, and limits to ensure greater oversight, transparency, and targeting of funding to hospitals.

To qualify as a DSH under section 1923(b) of the Act, a hospital must meet two minimum qualifying criteria in section 1923(d) of the Act. The first criterion is that the hospital has at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to Medicaid individuals. This criterion does not apply to hospitals in which the inpatients are predominantly individuals under 18 years of age or hospitals that do not offer nonemergency obstetric services to the general public as of December 22, 1987. The second criterion is that the hospital has a Medicaid inpatient utilization rate (MIUR) of at least 1 percent.

Under section 1923(b) of the Act, a hospital meeting the minimum qualifying criteria in section 1923(d) of the Act is deemed as a DSH if the hospital's MIUR is at least one standard deviation above the mean MIUR in the state, or if the hospital's low-income utilization rate exceeds 25 percent. States have the option to define disproportionate share hospitals under the state plan using alternative qualifying criteria as long as the qualifying methodology comports with the deeming requirements of section 1923(b) of the Act. Subject to certain federal payment limits, states are afforded flexibility in setting DSH state plan payment methodologies to the extent that these methodologies are consistent with section 1923(c) of the Act. Section 1923(f) of the Act limits federal financial participation (FFP) for total statewide DSH payments made to eligible hospitals in each federal FY to the amount specified in an annual DSH allotment for each state. Although there have been some special rules for calculating DSH allotments for particular years or sets of years, section 1923(f)(3) of the Act establishes a general rule that state DSH allotments are calculated on an annual basis in an amount equal to the DSH allotment for the preceding FY increased by the percentage change in the consumer price index for all urban consumers for the previous FY. The annual allotment, after the consumer price index increase, is limited to the greater of the DSH allotment for the previous year or 12 percent of the total amount of Medicaid expenditures under the state plan during the FY. Allotment amounts were originally established in the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Pub. L. 102–234 enacted on December 12, 1991) based on each state's historical DSH spending.

Section 1923(g) of the Act also limits FFP for DSH payments by imposing a hospital-specific limit on DSH payments. FFP is not available for DSH payments that exceed the hospital's uncompensated cost of providing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and the uninsured, minus payments received by the hospital by or on the behalf of those patients.

The statute requires annual aggregate reductions in federal DSH funding from FY 2014 through FY 2020. The aggregate annual reduction amounts are as follows:

- $500 million for FY 2014.
- $600 million for FY 2015.
- $600 million for FY 2016.
- $1.8 billion for FY 2017.
- $5 billion for FY 2018.
- $5.6 billion for FY 2019.
- $4 billion for FY 2020.

To implement these annual reductions, the statute requires that the Secretary reduce annual state DSH allotments, and payments to states, based on a DHRM specified in section 1923(f)(7)(B) of the Act. The proposed DHRM relied on the five statutorily identified factors collectively to determine a state-specific DSH allotment reduction amount to be applied to the allotment that is calculated under section 1923(f) of the Act prior to the reductions under section 1923(f)(7) of the Act.

*C. The Impact of a State's Decision To Adopt the New Low-Income Adult Coverage Group*

The statute provides significant federal financial support for states to extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act. For a state that implements the new adult coverage group, the federal government will cover 100 percent of the cost of coverage for newly eligible individuals from 2014 through 2016 and no less than 90 percent thereafter. Hospitals will also receive full Medicaid reimbursement for many previously uninsured patients. So on balance, we believe both hospitals and states stand to benefit greatly from expanding Medicaid. In addition, new premium tax credits and cost sharing reductions will be available to low-income individual in all states.

Implementation of the Affordable Care Act's coverage expansion is expected to affect the amount of uncompensated care and the percentage of uninsured individuals within states. Generally, we expect that states that do not implement the new coverage group would have relatively higher rates of uninsurance, and more uncompensated care, than states that adopt the new coverage group.

Because states that implement the new coverage group would likely have reductions in the rates of uninsurance, the reduction in DSH funding may be greater for such states compared to states that do not implement the new coverage group. Consequently, hospitals in states implementing the new coverage group that serve Medicaid patients may experience a deeper reduction in DSH payments than they would if all states were to implement the new coverage group.

Currently, we do not have sufficient information on the relative impacts that would result from state decisions to implement the new coverage group, and thus, we proposed a DHRM only for the first 2 years during which the DSH funding reductions are in effect. We

intend to continue evaluating potential implications for accounting for coverage expansion in the DHRM. Accordingly, we proposed to establish a DHRM that would be in effect for FY 2014 and FY 2015 and we did not include a method to account for coverage expansion decisions in Medicaid for FY 2014 and FY 2015.

*D. DHRM Data Sources*

The statute establishes parameters regarding data and/or suggested data sources for specific factors in the development of the DHRM. We proposed to utilize for the DHRM, wherever possible, data sources and metrics that are transparent and readily available to CMS, states, and the public, such as: United States Census Bureau data; Medicaid DSH data reported as required by section 1923(j) of the Act; existing state DSH allotments; and Form CMS–64 Medicaid Budget and Expenditure System (MBES) data. We proposed to utilize the most recent year available for all data sources. For one data source, we intend to collect information directly from state Medicaid agencies outside of this rule.

Specifically, we intended for states to submit the information used to determine which hospitals are deemed disproportionate share under section 1923(b) of the Act. Although we do not currently collect this information, because states are required to make DSH payments to hospitals that are DSH eligible, states should have this information readily available. To ensure that all hospitals are properly deemed disproportionate share, states must determine the mean MIUR for hospitals receiving Medicaid payments in the state and the value of one standard deviation above the mean. We also proposed to rely on data derived from Medicaid DSH audit and reporting data. The data is reported by states as required by section 1923(j) of the Act and the ''Medicaid Disproportionate Share Hospital Payments'' final rule published on December 19, 2008 (73 FR 77904) (and herein referred to as the 2008 DSH final rule) requiring state reports and audits to ensure the appropriate use of Medicaid DSH payments and compliance with the DSH limit imposed at section 1923(g) of the Act. This is the only comprehensive data source for DSH hospitals that identifies hospital-specific DSH payments, hospital-specific uncompensated care costs, and hospital-specific Medicaid utilization in a manner consistent with Medicaid DSH program requirements.

To date, we have received rich, comprehensive audit and reporting data from each state that makes Medicaid DSH payments. To facilitate the provision of high quality data, we provided explicit parameters in the 2008 DSH final rule and associated policy guidance for calculating and reporting data elements. The 2008 DSH final rule included a transition period in which states and auditors could develop and refine audit and reporting techniques. This transition period covered data reported relating to state plan rate years 2005 through 2010. We recognize that the DSH audit and reporting data during this transition period may vary in its quality and accuracy from state to state and have considered utilizing alternative uncompensated cost data and Medicaid utilization data from sources such as the Medicare Form CMS–2552. The DSH audit and reporting data, however, remains the only comprehensive reported data available that is consistent with Medicaid program requirements. States are already required to report this data by the last day of the federal fiscal year ending 3 years from the Medicaid state plan rate year under audit as required by the 2008 DSH final rule. However, state submitted audit and reporting data is subject to detailed CMS review and may require significant resources to ensure that it is compiled and prepared for use in the proposed DHRM. This means that the data used for the methodology may not be the most recently submitted data, but instead the most recent data available for use in this context. We have been actively engaged in reviewing state audits and reports to ensure quality and accuracy. Consistent with ongoing efforts to ensure that the reported data is of the highest quality possible as we move through the transition period, we intend to issue additional detailed guidance to states by the end of calendar year (CY) 2013 that would be applicable to audits and reports due by the end of CY 2014.

As required by the statute, the DHRM must impose the larger percentage DSH allotment reductions on the states that have the lowest percentages of uninsured individuals. Although other sources of this information could be considered for this purpose, the statute explicitly refers to the use of data from the Census Bureau for determining the percentage of uninsured for each state. We identified and considered two Census Bureau data sources for this purpose, the American Community Survey (ACS); and the Annual Social and Economic Supplement to the Current Population Survey (CPS). In consultation with the Census Bureau, we proposed to use the data from the ACS for the following reasons. First, the ACS is the largest household survey in the United States; in that regard, the annual sample size for the ACS is over 30 times larger than that for the CPS—about 3 million for the ACS versus 100 thousand for the CPS. The ACS is conducted continuously each month throughout the year, with the sample for each month being roughly 1/12th of the annual total, while the CPS is conducted in the first 4 months following the end of the survey year. Finally, although the definition of uninsured and insured status is the same for the ACS and the CPS, the CPS considers the respondents as uninsured if they are uninsured at any time during the year whereas the ACS whether the respondent has coverage at the time of the interview, which are conducted at various times throughout the year. For these reasons, and with the recommendation of the Census Bureau, we determined that the ACS is the appropriate source for establishing the percentage of uninsured for each state for purpose of the proposed DHRM.

In addition to Census Bureau data, we considered using various alternative data with different population parameters and/or different definitions of uninsured individuals, but ultimately decided to utilize the ACS as the source for establishing the percentage of uninsured for each state. We are also considering adjusting the definition of the uninsured for reductions applicable for FY 2016 and beyond reductions through separate rulemaking.

## III. Provisions of the Proposed Regulations and Analysis of and Responses to Public Comments

In response to the publication of the State Disproportionate Share Hospital Allotment Reductions proposed rule, we received 87 public comments from state Medicaid agencies, provider associations, providers, and other interested parties. The following is a brief summary of each proposed provision, a summary of the public comments that we received related to that proposal, and our responses to the comments.

*A. General Comments on the Proposed Rule*

In addition to the comments we received on the proposed rule's discussion of specific aspects of the State DSH Allotment Reductions (which we address later in this final rule), commenters also submitted the following more general observations on the reductions. A discussion of these

comments, along with our responses, appears below.

*Comment:* Many commenters expressed appreciation for the overall approach of the proposed rule. Some commenters expressed support that the statutory DSH reductions are implemented through reductions to DSH allotment instead of reductions to the Federal Medical Assistance Percentage (FMAP) for states.

*Response:* The final rule implements annual aggregate reductions in federal DSH allotments in accordance with the statutory direction and does not modify the FMAP for states.

*Comment:* Many commenters expressed support for delaying the implementation of the annual aggregate reductions to state DSH allotments through Congressional legislation adopting the President's Budget for Fiscal Year (FY) 2014 legislative proposal or other legislation such as the House Bill H.R.1920—DSH Reduction Relief Act of 2013. The commenters provided various reasons for the requested delay including the need for sufficient time for the full implementation of Affordable Care Act and potential implications of significant changes to the number of uninsured individuals and Medicaid individuals after implementation of the Affordable Care Act. Additionally, one commenter recommended that the DSH allotment reductions remain in full effect as legislated and proposed.

*Response:* We note that the FY 2014 President's Budget proposes a legislative change to delay the start of the Medicaid DSH allotment reductions while reallocating the scheduled $500 million aggregate reduction to FY 2016 and FY 2017. In the absence of a legislative change, the aggregate reductions in federal DSH funding will begin with FY 2014 as required by current law. HHS has no flexibility to institute a delay of the DSH allotment reductions without congressional action.

*Comment:* A few commenters stated that states should retain flexibility in design of their DSH programs and how DSH payments are targeted to hospitals as long as funds are spent on patient care.

*Response:* This final rule will not affect the considerable flexibility afforded states in setting DSH state plan payment methodologies to the extent that these methodologies are consistent with section 1923(c) of the Act and all other applicable statute and regulations. States will retain the ability to preserve existing DSH payment methodologies or to propose modified methodologies by submitting state plan amendments. Although the final rule implements statutory direction to impose larger percentage reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients and on states that do not target their DSH payments on hospitals with high levels of uncompensated care, states will retain the flexibility to make payments that are both consistent with section 1923(c) of the Act, and within reduced DSH allotment amounts.

*Comment:* Many commenters expressed support for the proposal for an initial DHRM that would be applicable only for the first 2 years during which the DSH funding reductions are in effect.

*Response:* We have finalized the DHRM only for FY 2014 and FY 2015.

*Comment:* Some commenters expressed general opposition to the Medicaid DSH allotment reductions required by statute citing, in part, the timing and amounts of the reductions. Another commenter opposed the proposed rule because it would result in a reduction of DSH payments.

*Response:* Federal statute requires annual aggregate reductions in federal DSH funding that begin with FY 2014. Federal DSH allotments will remain available at reduced levels for states to continue to make DSH payments to hospitals that serve a disproportionate share of low-income individuals and qualify for DSH payments under federal and state requirements. As noted above, the FY 2014 President's Budget proposes a legislative change to delay the start of the Medicaid DSH allotment reductions, but without a change in law, these final regulations will implement the reductions beginning with FY 2014.

*Comment:* Some commenters expressed support for the Medicaid DSH program and recommended that Medicaid DSH payments continue to ensure that hospitals are able to provide uncompensated care for uninsured individuals.

*Response:* The proposed rule does not eliminate DSH payments or affect state flexibility in setting DSH payments. The rule implements annual aggregate reductions in federal DSH funding for FY 2014 and FY 2015. For FY 2014 and thereafter, federal DSH allotments will remain available at reduced levels for states to continue to make DSH payments to hospitals that serve a disproportionate share of low-income individuals and qualify for DSH payments under federal and state requirements.

*Comment:* Some commenters recommended that Medicaid DSH allotments be restored if expanded health care coverage resulting from the Affordable Care Act does not occur.

*Response:* While the statute specifies annual reduction amounts independent of the extent to which expanded health care coverage resulting from the Affordable Care Act occurs, we are confident that health insurance coverage will increase significantly as a result of the Act. The final rule implements provisions of the federal statute relating to federal DSH funding for FY 2014 and 2015.

*Comment:* A commenter expressed concern that CMS would not have sufficient time to review, consider, and incorporate state feedback based on public comments on the proposed rule and calculate state DSH allotments for FY 2014 in a timely manner.

*Response:* We reviewed and considered public comment carefully and thoroughly, and issued this final rule in a timely manner incorporating input from public comment. Additionally, we anticipate timely calculating DSH allotments and state-specific reductions for FY 2014.

*Comment:* A few commenters questioned our regulatory interpretation of the provisions specified in section 1923(g)(1)(a) of the Act. Regulatory policy requires that all revenue received by a hospital for providing services to Medicaid-eligible individuals with an additional source of third-party coverage be offset against the cost of providing such services when calculating the hospital-specific DSH limit. These commenters requested that we amend these regulations to specify that revenues received by a hospital from third party coverage for services provided to Medicaid-eligible individuals must only offset costs of providing such services to the extent of the Medicaid payment for purposes of calculating the hospital-specific limit and DSH qualification.

*Response:* This regulation does not address the calculation of hospital-specific DSH payment limits under section 1923(g) of the Act; it only addresses the statutorily-required Medicaid DSH allotment reductions. Changes to existing DSH calculation rules are outside the scope of this rule.

*Comment:* One commenter submitted a comment regarding the Medicare DSH program.

*Response:* Comments on the Medicare DSH program are outside the scope of this rule on Medicaid DSH allotment reductions and were addressed in separate rulemaking issued by us in August of this year.

*Comment:* One commenter recommended that we analyze state-by-state Medicaid and Medicare payment

differentials to lower DSH allotment reduction amounts for states with payment disparity between the two programs. The commenter also recommended that we offset Medicaid DSH reduction amounts for states that have global, risk-based payment arrangements.

*Response:* The Medicaid and the Medicare programs are distinct programs authorized by different sections of the statute and the Medicare and Medicaid DSH rules have somewhat different purposes and statutory directives. The Affordable Care Act directed the manner in which Medicaid DSH reductions should be implemented. As directed by statute, the final DHRM imposes larger percentage reductions on states that do not target their DSH payments on hospitals with high levels of uncompensated care. Uncompensated care cost, as defined in this final rule, already includes the amount Medicaid payments fall short of hospital costs (the Medicaid shortfall). The final rule's treatment of Medicaid shortfall is consistent with other existing statutory and regulatory Medicaid DSH definitions of uncompensated care cost.

We are committed to supporting innovative care delivery models and payment models with potential to improve care, improve health, and reduce costs, and states can structure their DSH funding to help promote those goals. We encourage states and providers to contact CMS to obtain more information regarding opportunities to implement innovative care delivery models and payment models.

*Comment:* Many commenters recommended that we finalize the provisions of the January 18, 2012 proposed rule entitled, ''Medicaid Disproportionate Share Hospital Payments—Uninsured Definition.'' That proposed rule would define ''individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year'' for purposes of calculating the hospital-specific DSH limit on a service-specific basis rather than on an individual basis.

*Response:* Comments on the January 18, 2012 proposed rule are outside the scope of the proposed rule on Medicaid DSH allotment reductions and will be finalized in future rulemaking.

*Comment:* Several commenters requested clarification regarding how state-specific DSH allotment reductions in the proposed rule would affect the determination of the limit on Medicaid DSH payments to institutions for mental diseases (IMD). Some of the commenters recommended that we proportionately reduce the IMD DSH limit based on the aggregate DSH allotment reduction. One commenter expressed support for state flexibility in determining the effects of the aggregate DSH allotment reductions on the IMD DSH limit.

*Response:* Effective for FY 2014 and FY 2015, we will calculate the IMD DSH limit under section 1923(h) of the Act based on the DSH allotment after reductions implemented by the final rule to ensure that the IMD limit experiences a corresponding reduction consistent with the overall reductions in annual state DSH allotments.

*Comment:* Some commenters requested that we clarify when and how we will recoup state-specific DSH allotment reduction amounts from states.

*Response:* The final rule implements aggregate reductions in federal funding for DSH payments through reductions in annual state-specific DSH allotment reductions in accordance with section 1923(f)(7) of the Act. This section requires the use of a DHRM to determine the percentage reduction in each annual state DSH allotment to achieve the required aggregate annual reduction in federal DSH funding; there is no ''recoupment'' process because the DSH reductions are prospective, not retrospective.

*Comment:* One commenter requested clarification on how the amount of the FY 2014 unreduced DSH allotment for Tennessee and for the State of Hawaii for FY 2014 as included in the proposed rule was determined, and how the low-DSH state status for these state was determined.

*Response:* The amounts of the states' unreduced DSH allotments and the treatment of the states' low DSH status, as reflected in the Table 1 of the proposed rule, were only for the purpose of illustrating the DSH Health Reform Methodology for all states. Such amounts were determined in accordance with the existing methodology for determining the amounts of states' unreduced fiscal year DSH allotments. For this purpose, and in accordance with the existing methodology for determining states' unreduced allotments, the illustrative unreduced DSH allotments for FY 2014 in Table 1 of the proposed rule were based on the states' FY 2013 DSH allotments. Those allotments were increased by the estimated percentage increase in the consumer price index for all urban consumers (CPIU) for FY 2013.

As noted by the commenter, the current statute at section 1923(f)(6)(A) of the Act does not authorize a FY 2014 DSH allotment for the State of Tennessee. However, for the state of Hawaii, the current statute at section 1923(f)(6)(B)(iii)(II) of the Act does authorize a FY 2014 DSH allotment for such state. Furthermore, such provision explicitly indicates that Hawaii shall be treated as a low-DSH state.

In summary, a FY 2014 DSH allotment for the State of Tennessee and the State of Hawaii was included in Table 1 of the proposed rule for illustrative purposes only. However, an allotment for the State of Tennessee would be available only if the statute was amended to provide for a FY 2014 DSH allotment for the state. In addition, a statutory amendment would be needed for Tennessee to be considered a low-DSH state.

*B. DHRM Overview*

We proposed to apply the DHRM to the unreduced DSH allotment amount on an annual basis for FY 2014 and FY 2015. Under the DHRM, we considered the five factors identified in the statute to determine each state's annual state-specific annual DSH allotment reduction amount. Limitations on the availability of data relating to some of the five factors affect the calculation, and therefore, we solicited comment regarding readily available data sources that may be useful.

The proposed DHRM utilized available data and a series of interacting calculations that result in the identification of state-specific reduction amounts that, when summed, equal the aggregate DSH allotment reduction amount identified by the statute for each applicable year. The proposed DHRM accomplished this through the summarized steps discussed in the proposed rule (78 FR 28555). In addition, we solicited public comment and input regarding alternate assignments. We also solicited comments on how these weights would impact specific hospital types. The manner in which each of these factors were considered and calculated in the proposed DHRM was described in greater detail in the proposed rule (78 FR 28555).

*Comment:* One commenter recommended corrections and clarification corrections to multiple terms defined in § 447.294(b).

*Response:* We addressed the need for technical correction and clarification by modifying the language of § 447.294(b) in this final rule. Specifically, we modified the definitions in § 447.294(b) for ''Mean high level of uncompensated care factor (HUF) reduction percentage,'' ''State group,'' ''Total Medicaid cost,'' and ''Uncompensated care costs'' by correcting a typographical error and adding clarifying language.

*Comment:* One commenter recommended that CMS clarify for which years states are required to submit annual MIUR data as proposed at § 447.294(d).

*Response:* We are finalizing § 447.294(d) to include additional clarifying language regarding the required state submission of MIUR data. We finalized this section to specify that states must initially provide the data for following Medicaid State Plan Rate Years (SPRY) as defined in § 455.301: 2008, 2009, 2010, 2011 by June 30, 2014. States must also provide this data for each subsequent SPRY to CMS by June 30 of each year. To determine which SPRY data must be submitted, subtract three years from the calendar year in which the data is due. This means that the SPRY 2012 data must be submitted to CMS by June 30, 2015.

*Comment:* One commenter requested changes to § 447.294(f) to clarify that the state-specific DSH allotment reduction amounts in the proposed rule only applies to FY 2014 and FY 2015 DSH allotments.

*Response:* We are finalizing § 447.294(f) to specify that the state-specific DSH allotment reduction amounts in the proposed rule only applies to FY 2014 and FY 2015 DSH allotments.

*Comment:* One commenter recommended corrections to multiple instances when § 447.294(e)(10) was mistakenly referenced instead of § 447.294(e)(12). The commenter also noted that § 447.294(e)(10) mistakenly refers to the ''HMF'' instead of the ''HUF.''

*Response:* We are correcting these references in this final rule.

*Comment:* Many commenters expressed support that the proposed rule would not reflect state decisions to implement the new coverage group, would not cause undue harm to states that have not implemented or not decided to implement the new coverage group, and that the DHRM is only for the first 2 years during which the DSH funding reductions are in effect to allow continued evaluation of potential implications for accounting for coverage expansion in the DHRM.

*Response:* We intend to address the issue more completely in separate rulemaking for DSH allotment reductions for FY 2016 and thereafter.

*Comment:* Some commenters expressed support that the proposed DHRM does not reward states that do extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act. A few of these commenters suggested that CMS develop a mechanism in the DHRM to ensure that states that do not extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act do not receive a lower DSH reduction as a result of their decision.

*Response:* Currently, we do not have data or other information on the relative impacts that would result from state decisions to implement the new coverage group, and thus, we proposed a DHRM only for the first 2 years during which the DSH funding reductions are in effect. The data that the reductions are based on for the first two years will not reflect state decisions to implement the new coverage group. Such data will be available in 2016. We intend to address this issue more completely in separate rulemaking for DSH allotment reductions for FY 2016 and thereafter including consideration of proposals that would take account of the decisions of states to expand coverage.

*Comment:* A few commenters expressed concern that the states that implemented various health reforms, including expanding Medicaid eligibility, prior to enactment of the Affordable Care Act would be unfairly penalized by the DHRM and would be forced to subsidize those states that have opted not to expand coverage. One of the commenters suggested that CMS modify the uninsured data to reflect the anticipated decrease in the uninsured for states that have indicated their intent to, but have not yet begun to, extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act.

*Response:* The statute provides significant federal financial support for states to extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act. For a state that implements the new adult coverage group, the state and its hospitals will receive full Medicaid reimbursement for many previously uninsured patients. Therefore, we believe both hospitals and states stand to benefit greatly from expanding Medicaid.

As discussed in the proposed rule, implementation of the new coverage group is expected to affect the amount of uncompensated care and the percentage of uninsured individuals within states. Generally, we expect that states that do not implement the new coverage group would have relatively higher rates of uninsured, and more uncompensated care than states that adopt the new coverage group. We also recognize that are other factors that affect state rates of uninsurance, including coverage differences among states prior to the implementation of the Affordable Care Act. Because there is a fixed amount of DSH funding, states that implement the new coverage group would likely experience a reduction in DSH funding that would be greater than if all states had taken such action. Hospitals in those states would similarly be disadvantaged. However, these effects would not be experienced until after FY 2014 and FY 2015 based on current data reporting timelines. Accordingly, and considering the limits on funding for Medicaid DSH in the Affordable Care Act, we intend to account for the different circumstances among states in the formula in future rulemaking when the relevant data will be available.

For FY 2014 and 2015, we are finalizing the proposal to establish a DHRM that does not include a method to account for differential coverage expansions in Medicaid. We intend to address this issue more completely in separate rulemaking for DSH allotment reductions for FY 2016 and thereafter.

*Comment:* Many commenters expressed support for the uninsured percentage factor (UPF) calculation and another requested that the DHRM incorporate an adjustment into the UPF calculation to reduce the number of uninsured individuals in states that extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act so as to not unfairly penalize states that do not extend coverage to the new adult group. Another commenter asked that CMS create a separate DSH pool that would allocate funds directly to hospitals with high levels of uncompensated care in states that do not extend coverage to low-income adults because the hospitals would not benefit from the Medicaid coverage expansion. An additional commenter requested that CMS consider accounting for potential additional Medicaid payment shortfall, in additional to uninsured-related uncompensated care, when determining the relative impacts that would result from state decisions to implement the new low-income adults coverage group. Another commenter stated that CMS did not specify the data sources that DHRM would rely on to determine annual state-specific DSH allotment reduction amounts and expressed concern that the proposed rule states that the data used will reflect differential state decisions to implement the new low-income adults coverage group under section 1902(a)(10)(A)(i)(VIII) of the Act.

*Response:* We disagree that the proposed methodology would unfairly penalize states that do not extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act. The data that the reductions are based on for these 2 years will not reflect state

decisions to implement the new coverage group. Data reflecting the effects of the decision to implement the new coverage group may not be available to consider the impact of such a decision until 2016. We intend to address this issue more completely in separate rulemaking for DSH allotment reductions for FY 2016 and thereafter.

Additionally, we intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation, including the additional information regarding data sources.

*Comment:* Several commenters recommended that CMS ensure through future rulemaking that states that extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act do not receive increased DSH allotment reductions as a result of anticipated reductions in uninsurance rates. A few other commenters recommended that CMS ensure through future rulemaking that states that do not extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act do not receive increased DSH allotment reductions as a result of anticipated reductions in uninsurance rates.

*Response:* We intend to address this issue more completely in such separate rulemaking for DSH allotment reductions for FY 2016 and thereafter.

*Comment:* One commenter indicated that the proposed rule favors states that do not implement the new low-income adults coverage group under section 1902(a)(10)(A)(i)(VIII) of the Act by not relying on uninsured data that would be available reflecting the differential decisions by states to adopt the new adult coverage group. The commenter indicates that CMS is violating statute by not relying on uninsurance data from ''the most recent year for which the data are available.'' Another commenter requested that we specify which year's United States Census Bureau's American Community Survey (ACS) data we will use for the DHRM and is concerned that the use of recent data will adversely affect states implementing the new low-income adults coverage group.

*Response:* We disagree that the proposed methodology favors states that do not implement the new low-income adults coverage group under section 1902(a)(10)(A)(i)(VIII) of the Act or that the proposed methodology would violate statutory provisions. The uninsured data is derived from the 1-year estimates data of the number of uninsured identified by the ACS. The statute references use of uninsured data from the United States Census Bureau and the methodology relies on the most recent available data. The data from the ACS will not be available for the period including January 1, 2014, or later until after the calculation of the DSH allotment reduction amounts for both FY 2104 and FY 2015. Therefore, because of the lag in the data, this final rule will rely on uninsured individual data for periods prior to January 1, 2014.

*Comment:* One commenter stated that the DHRM in the proposed rule would violate the statute by separating states into state groups based on their status as low-DSH states. The commenter's suggested violation is based on not following the statutory language directing ''smaller'', not the ''smallest'' reductions for low-DSH states and the language that requires the ''largest'' percentage reductions for states that have the lowest percentage of uninsured individuals and do not target DSH payments to hospitals with high levels of Medicaid inpatients and high levels of uncompensated care.

*Response:* We disagree that the proposed methodology violates statutory provisions. The methodology in the proposed rule, which we are adopting in this final rule, imposes smaller percentage reductions on low-DSH states compared to non-low DSH states and, within each state group, imposes larger percentage reductions on states that have the lowest percentages of uninsured individuals and on states that do not target their DSH payments to hospitals with high volumes of Medicaid inpatients and high levels of uncompensated care.

*Comment:* A commenter recommended that CMS implement the statutory DSH allotment reductions through pro rata reductions based on the size of the existing DSH allotment instead of relying on the five factors identified in the statute. The commenter also offers an alternative through use of the pro rata method for half of the allotment reduction amount and using the five statutory factors for the remaining amount. The commenter believes that the pro rata reductions would take into account the current DSH funding structure and would be less disruptive.

*Response:* Section 1923(f)(7)(B) of the Act establishes five factors that must be considered in the development of the DHRM, and in the DHRM which we proposed and are making final, we give weight to each of those five factors. The five factors implicitly take into account the size of the existing state DSH allotments, and the reduction is applied to the existing state DSH allotment.

*Comment:* A commenter recommended that CMS incentivize states to target more DSH payment to hospitals with high volumes of Medicaid inpatients and high levels of uncompensated care.

*Response:* The statute requires that the DHRM methodology impose larger percentage DSH reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients and high levels of uncompensated care. While states have considerable flexibility in determining DSH payments, we believe that the statutory provision as implemented by DHRM will promote state targeting of DSH payments to hospitals with high volumes of Medicaid inpatients and hospitals with high levels of uncompensated care.

*Comment:* Two commenters recommended that the DHRM should first reduce unspent DSH allotment amounts prior to imposing additional reduction amounts to protect states that use their full DSH allotment.

*Response:* We did not propose to reallocate unreduced DSH allotments calculated under section 1923(f) of the Act. The suggested method could serve to penalize unfairly states that do not currently expend their entire DSH allotment. We are finalizing the structure of proposed DHRM that considers five factors identified by section 1923(f)(7)(B) of the Act when determining state-specific allotment reduction amounts.

*Comment:* A commenter recommended that the DHRM should avoid imposing retroactive reductions to state DSH allotments and instead establish prospective DSH allotment reductions adjustments that rely on final or completed data from previous years.

*Response:* The final rule establishes prospective DSH allotment reductions based on the most recent prior year data and does not impose retroactive allotment adjustments.

*Comment:* A commenter expressed concern that the DHRM relies on existing unreduced DSH allotments as the basis for application of the DHRM because the allotments are highly inequitable. The commenter recommended that CMS reallocate DSH allotments based on states' uncompensated care costs prior to applying the annual DSH allotment reductions.

*Response:* The DHRM builds upon the existing unreduced DSH allotments because the statutory DHRM authority does not authorize reallocation of state DSH allotments under section 1923(f) of the Act. This section of the Act establishes the specific methodology required for calculating annual state DSH allotments. Although there have been some special rules for calculating

DSH allotments for particular years or sets of years, section 1923(f)(3) of the Act establishes a general rule that state DSH allotments are calculated on an annual basis in an amount equal to the DSH allotment for the preceding FY increased by the percentage change in the consumer price index for all urban consumers for the previous FY. Neither the statute nor this rule affects this calculation.

Uncompensated care costs are a factor under the DHRM in determining state-specific allotment reduction amounts because the statute directs that the DHRM impose larger percentage DSH allotment reductions on states that do not target DSH payments on hospitals with high levels of uncompensated care. But this factor does not reallocate existing DSH allotments, and this rule finalizes the use of existing unreduced DSH allotments as proposed.

*Comment:* Some commenters expressed concern that the application of the High Volume of Medicaid Inpatients Factor (HMF) and High Level of Uncompensated Care Factor (HUF) would not be consistent with the stated intention of those two factors. The commenters recommended that the proposed DHRM should consider any state DSH payment amount made to a hospital with either high Medicaid volume or high levels of uncompensated care as properly targeted for both the HMF and HUF.

*Response:* We disagree with the commenters that the proposed application of the HMF and HUF would be inconsistent with the stated intention of those two factors, which are discussed further in sections E. and F. of this rule. The factors are designed and implemented to ensure that the DHRM imposes larger percentage DSH allotment reductions on states that do not target DSH payments on hospitals with high levels of uncompensated care and on states that do not target DSH payments on hospitals with high volumes of Medicaid inpatients. The HMF independently evaluates how states target DSH payments to high Medicaid volume hospitals and the HUF independently evaluates how states target DSH payments to hospitals with high levels of uncompensated care. The allotment reduction amount will be mitigated under both the HMF and HUF for DSH payment amounts that states target to hospitals with both a high volume of Medicaid inpatients and a high level of uncompensated care.

*Comment:* One commenter recommended that any overpayment amount identified through annual independent certified DSH audits conducted as required by section 1923(j) of the Act that is not redistributed to other DSH hospitals in accordance with the approved Medicaid state plan count toward the aggregate annual DSH allotment reductions prior to applying the DHRM. Another commenter recommended that we account for redistributions that would have occurred if the data is outside of the regulatory transition period and requested clarification on how redistributions would be accounted for after the transition period.

*Response:* This rule concerns only the DSH allotment reductions under section 1923(f)(7) of the Act, as added by section 2551 of the Affordable Care Act, and this comment is outside the scope of this rule. We view the treatment of the findings of the annual independent certified audits and reports required by section 1923(j) of the Act and implementing regulations as separate from the DSH allotment reductions directed by the Act.

*Comment:* One commenter recommended that CMS add an additional factor to the DHRM based on whether a state is over or under the median amount of Medicaid DSH allotment per uninsured individual. The commenter stated that the proposed DHRM does not address the existing disparity in the relationship among state's DSH allotment relative to the number of uninsured individuals and that the DHRM causes this relationship to be further out of balance. The commenter believes that the inequitable relationship is furthered by the proposed DHRM, and noted that the illustrative example displayed Florida as having a 4.74 percent allotment reduction while Louisiana had a 3.46 percent reduction.

*Response:* Although the proposed DHRM does not alleviate all potential differences among states in existing unreduced DSH allotments, the DHRM does provide potential relief. While the statutory provisions implemented by this final rule do not direct CMS to reallocate unreduced DSH allotments calculated in section 1923(f) of the Act, each of the five DHRM factors do take into account the size of the existing state DSH allotments. Most notably, the Low DSH Adjustment Factor (LDF) imposes smaller percentage reductions on low DSH states that historically have received lower DSH allotments relative to their total Medicaid expenditures than non-low DSH states.

Additionally, we do not believe that the commenter's example demonstrates that the proposed DHRM will necessarily further the disparity among states' uninsured per capita DSH allotment amounts. Although states with smaller unreduced allotments may receive larger percentage reductions than states with larger unreduced allotments, the final DHRM does account for the size of state allotments prior to reduction.

1. Factor Weighting

*Comment:* Many commenters expressed support for CMS's assignment of a 33 and ⅓ percent weight to the Uninsured Percentage Factor (UPF) and a 66 and ⅔ percent combined weight for the two DSH payment targeting factors (a 33 and ⅓ percent weight for the HUF, and a 33 and ⅓ percent weight for the HMF). The commenters indicated that this was the most reasonable approach for assigning factor weights.

*Response:* We incorporated this weighting in the final rule. We intend to continue to monitor the impact of the weighting methodology for FY 2014 and FY 2015 and will reevaluate this approach for future rulemaking.

*Comment:* A few commenters recommended that CMS increase the weight of the HUF and reduce the weight of the HMF, stating that the weighting accounts for the care provided to Medicaid hospitals is duplicated or unbalanced. One of the commenters believes that the alternate weighting would compensate for the fact that both the HMF and the HUF incorporate Medicaid data, whereas uninsured care is only reflected in the HUF.

*Response:* We recognize that relationships among the data used in the UPF, HMF, and HUF exist; however, we view the DHRM factors as distinct and non-duplicative. The UPF, HMF, and HUF each compare data among states using three core measures: percentage of uninsured individuals, DSH payments targeted to hospitals with high volumes of Medicaid inpatients, and DSH payments targeted to hospitals with high levels of uncompensated care, respectively. The interactions among these related factors are varied and inconsistent. Depending on the cost, payment, and volume of Medicaid and uninsured patients, a hospital with a high volume of Medicaid inpatients may have no uncompensated care cost. Alternatively, a hospital with low Medicaid volume may have high uncompensated care costs which may be a function, in part, of the high percentage of uninsured individuals in the state. The fact that the HMF and the HUF both rely on Medicaid data is not dissimilar to the UPF and HUF relying on uninsured data.

*Comment:* One commenter recommended that CMS increase the weight of the UPF, based on the

importance of DSH payments to hospitals that serve patients regardless of their ability to pay.

*Response:* We appreciate the important role of hospitals that serve patients regardless of their ability to pay. However, we believe that the weighting in the proposed rule is a reasonable approach that gives the statutory factors equal weight and have incorporated this method in the final rule. We intend to continue to monitor the impact of the weighting methodology for FY 2014 and FY 2015 and will reevaluate this approach for future rulemaking.

*Comment:* A commenter recommended that CMS decrease the weight of the UPF to incentivize states to extend coverage to low-income adults under section 1902(a)(10)(A)(i)(VIII) of the Act.

*Response:* As noted above, because of data lags, we do not have the data to support an approach in the first 2 years that reflects state decisions to implement the new coverage group, and thus, we proposed and are finalizing a DHRM only for the first 2 years during which the DSH funding reductions are in effect. We intend to address this issue more completely in separate rulemaking for DSH allotment reductions for FY 2016 and thereafter.

*Comment:* One commenter recommended that CMS decrease the weight of the HUF to recognize the benefits of DSH payments in certain states that are designed to exclusively offset uninsured costs and to promote access to care.

*Response:* We appreciate the important role of hospitals that serve uninsured patients. The proposed DHRM would promote the state targeting of DSH payments to hospitals with high levels of uncompensated care costs, which include the cost incurred providing services to the uninsured. A state that targets DSH payments to hospitals based on the volume of uncompensated care costs for the uninsured would most likely benefit from the proposed methodology. We believe that the weighting in the proposed rule is a reasonable approach that incentivizes states to target their DSH payments and have incorporated this method in the final rule. We intend to continue to monitor the impact of the weighting methodology for FY 2014 and FY 2015 and will reevaluate this approach for future rulemaking.

*Comment:* Two commenters recommended that CMS decrease the weight of the HUF due to the limitations of the formula, lack of complete data, and the potential for paradoxical outcomes when comparing hospital levels of uncompensated care.

*Response:* Due to data limitations, we recognize that the HUF formula may produce very limited outcomes due to the limited data available at this time. However, we expect any impact resulting from such outcomes to be minimal and we believe that the proposed method represents the most reasonable method for determining hospitals with high levels of uncompensated care costs given limited data availability. Therefore, we have incorporated the proposed weighting method in the final rule. We intend to continue to monitor the impact of the weighting methodology for FYs 2014 and 2015 and will reevaluate this approach for future rulemaking. Additionally, by collecting the total cost, we are positioned through separately issued rulemaking for FY 2016 to substitute total cost for the denominator in step one of the HUF calculation to optimize the method for determining hospitals with high levels of uncompensated care.

*Comment:* Some commenters recommended that CMS reduce the weight of the UPF to zero at least until such time as CMS has data to measure the impact of state decisions to implement the new low-income adults coverage group under section 1902(a)(10)(A)(i)(VIII) of the Act.

*Response:* We believe that the proposed weighting is the most reasonable approach and have finalized this method in this final rule. We intend to continue to monitor the impact of the weighting methodology for FY 2014 and FY 2015 and will reevaluate this approach for future rulemaking.

*Comment:* One commenter expressed concern that CMS assigned any weight to the HMF because a hospital having high Medicaid inpatient days do not always indicate large Medicaid shortfalls and uncompensated care costs, because some states have relatively higher average MIURs than other states, and because relying on Medicaid days is inconsistent with federal, state, and industry efforts to reduce inpatient hospital use and lower readmissions. The commenter recommends that CMS assign zero weight to the HMF and instead only consider hospital's actual Medicaid shortfall.

*Response:* We have finalized the rule to continue to assign weight to the HMF. In promoting states to target current and future DSH payments to hospitals that have higher volumes of Medicaid inpatients, we believe that the HMF accomplishes its design and is consistent with the statutory direction that the DHRM impose larger percentage reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients. Section 1923(f)(7)(B)(i)(II)(aa) of the Act defines hospitals with high volumes of Medicaid inpatients as those defined in section 1923(b)(1)(A) of the Act.

*Comment:* A few commenters urged CMS to ensure that the two targeting factors do not penalize states that align DSH qualifying criteria very closely with federal deeming criteria at section 1923(b) of the Act. Specifically, the commenters recommended that the DHRM account for differences among states based on how states established their DSH qualifying criteria or target payments to hospitals that are deemed DSH based on low-income utilization rate (LIUR) alone. One commenter stated that states that primarily pay hospitals that are federally deemed hospitals will be negatively affected if the substantial payments are made to hospitals deemed based on the LIUR threshold, not the MIUR threshold.

*Response:* We have finalized the proposed DHRM that promotes state targeting of payments to hospitals that would qualify for DSH payments based on MIUR deeming requirements defined in section 1923(b)(1)(A) of the Act. This final rule establishes this targeting factor consistent with the statutory direction to impose larger percentage reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients and do not target their DSH payments on hospitals with high levels of uncompensated care The HMF provides mitigation of the state-specific DSH reduction amount for states that have been targeting and would in the future target DSH payments to these federally deemed hospitals. Hospitals with high LIURs may also high levels of uncompensated care costs. If those LIUR-deemed hospitals have high levels of uncompensated care, the HUF will provide mitigation of the state-specific DSH reduction amount for states that have been targeting and would in the future target DSH payments to those hospitals.

*Comment:* A commenter recommended that the DHRM impose a sliding scale for HMF and HUF reduction amounts based on the amount of aggregate state DSH payments received by DSH hospitals net of provider taxes compared to the unreduced DSH allotment.

*Response:* Medicaid DSH payment amount data sources used in the DHRM rely on existing federal statute and regulatory definitions of DSH payments. Changes to these existing definitions are outside the scope of this rule.

*Comment:* A few commenters recommended that we finalize our proposal to rely on state-specific thresholds when ranking hospitals for purposes of the HMF and HUF. One commenter stated that the method is a more accurate gauge of a hospital's true level of Medicaid volume and uncompensated care than a national comparison.

*Response:* We agree that the DHRM, including the HMF and HUF, is designed to employ the most equitable method for comparing how states target DSH payments for purposes of determining state-specific DSH allotment reduction amounts. We have finalized the HMF and HUF to rely on state-specific thresholds when ranking hospitals. However, we intend to continue to monitor the impact of the DHRM in effect for FY 2014 and FY 2015 and will reevaluate the DHRM for future rulemaking.

*Comment:* A commenter expressed general support for the DHRM and recommended that the final rule include a process to allow states to verify the calculation of the aggregate DSH payments made to non-high Medicaid volume hospitals used for the HMF and the calculation of the aggregate uncompensated care levels used for the HUF.

*Response:* To determine the aggregate DSH payments made to non-high Medicaid volume hospitals used for the HMF and the calculation of the aggregate uncompensated care levels used for the HUF, we utilize Medicaid DSH annual audit and reporting data required by section 1923(j) of the Act and implementing regulations. States submit this data annually to CMS. We appreciate the interest in ensuring that accurate data is used to calculate state-specific DSH allotment reductions; therefore, we recommend that states review this data to verify its accuracy prior to their annual submission of the data to CMS.

*Comment:* Some commenters requested clarity on the years of the DSH audit and reporting data used in the DHRM. One commenter also recommended that we clarify the meaning of usable form.

*Response:* For hospitals that receive DSH payments and are included in the DSH audit and reporting data, we proposed and are finalizing the use of the most recent complete DSH audit and reporting data for purposes of the DHRM. It requires considerable resources to review, compile, and consolidate DSH audit and reporting data. For purposes of this rule, we intend to use the most recent DSH audit and reporting data available at the time of allotment reduction calculation based on the existing DSH audit and reporting process. Additionally, we intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation and associated data sources.

*Comment:* Some commenters indicated that a state excluded private hospitals from the DSH audit and reporting data for all years after SPRY 2009 and are concerned that this would adversely affect the calculation of the state-specific DSH allotment reduction for that particular state. One commenter recommended that we use SPRY 2008 DSH audit and reporting data and not data from other years for the DHRM for FY 2014 and FY 2015. Another commenter recommended that we require states to report DSH payments of zero for any hospitals that forfeit their DSH payments and are excluded from DSH audit and reporting requirements.

*Response:* If there are concerns regarding the accuracy of the DSH audit and reporting data submitted by states, including incorrectly excluded hospitals, we recommend that the interested parties work with the state and CMS through the DSH audit and reporting process. Federal statute and implementing regulations only require the reporting of information for hospitals receiving DSH payments in a particular year. If hospitals do not receive DSH payments, including those hospitals that have worked with their state to forego DSH payments, the state should not report information for those hospitals as part of the DSH reporting requirements.

*Comment:* One commenter recommended that we require states to submit Medicare provider numbers for all DSH hospitals.

*Response:* We are finalizing the proposal to collect Medicare provider numbers through the DSH audit and reporting process to align DSH hospital data from various sources, including DSH audit and reporting data and Medicare cost report data.

*Comment:* Some commenters requested that CMS publish all hospital-specific data used in the DHRM for all proposed and final rules relating to state-specific DSH allotment reductions for transparency, to facilitate data review and validation.

*Response:* We intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation and associated data sources.

*Comment:* Some commenters recommended that CMS allow all states to supplement and to revise DSH audit and reporting data after the state submission of the audits and reports to CMS. Additionally, the commenter recommended the use of the last available data that relates to those hospitals that no longer participate in the DSH audit process.

*Response:* The final rule relies on DSH audit and reporting data as submitted by states in accordance with section 1923(j) of the Act and implementing regulations. The implementing regulations and associated policy guidance address circumstances in which the state should submit a corrected audit and report for a particular state plan rate year and when a state should include the adjustment in more recent years. States should follow existing guidance regarding when and how to submit corrected audits and report. For purposes of this rule, we intend to use the most recent complete national DSH audit and reporting data available at the time of allotment reduction calculation based on the existing DSH audit and reporting process.

*Comment:* Several commenters expressed concern regarding the use of DSH audit and reporting data for the DHRM. The commenters cited various reasons causing concern regarding data quality including the use of out-of-date data, the lag between DSH policy changes and audit and reporting data, the use of data used from a regulatory transition period, and the use incomplete data. Some commenters recommended that CMS use uniform data wherever possible among all hospitals for use in the DHRM and that CMS consider weighting more heavily the factors that have the most accurate data. Another commenter recommended that we consider initiating a separate survey to determine uncompensated care costs for a more recent year.

*Response:* The Medicaid DSH audit and reporting data is the only comprehensive reported data available that is consistent with Medicaid program requirements. We have finalized reliance on this data in the DHRM because it represents the best available data that is consistent with existing program definitions. To date, we have received rich, comprehensive audit and reporting data from each state that makes Medicaid DSH payments. To facilitate the provision of high quality data, we provided explicit parameters in the 2008 DSH final rule and associated policy guidance for calculating and reporting data elements. The 2008 DSH final rule included a transition period in which states and auditors could develop and refine audit and reporting techniques. This transition period covered data reported relating to state

plan rate years 2005 through 2010. We recognize that the DSH audit and reporting data during this transition period may vary in its quality and accuracy from state to state and have finalized the collection of additional information that will allow us to ensure collection of the information necessary to best implement state-specific DSH allotment reductions beyond FY 2015. Consistent with ongoing efforts to ensure that the reported data is of the highest quality possible as we move through the transition period, we intend to issue additional detailed guidance to states by the end of CY 2013 that would be applicable to audits and reports due to us by the end of CY 2014.

*Comment:* Many commenters recommended that CMS use uncompensated care costs from worksheet S–10 from the CMS–2552–10 cost report when determining uncompensated care costs for purposes of the DHRM. The commenters cited various reasons for the recommendation including, the S–10's broader definition of uncompensated care costs, reduced state burden of reporting total cost directly to CMS. Many commenters also recommended that we modify worksheet S–10 to ensure meaningful use for purposes of the DHRM in future years. Citing quality concerns of reported data, some commenters also recommended against the worksheet S–10 of the CMS–2552–10 to determine uncompensated care costs for the DHRM. The commenters recommend that CMS develop an unspecified alternate source to determine uncompensated care costs.

*Response:* Worksheet S–10 of the CMS–2552–10 cost report does not define uncompensated care cost in a manner consistent with the existing Medicaid program definition under section 1923(g) of the Act. To ensure program consistency, the definition under section 1923(g) of the Act is also used for purposes of this rule.

*Comment:* A few commenters recommended that we utilize the Healthcare Cost Report Information System (HCRIS) to determine total hospital cost for the DHRM.

*Response:* We recognize that total hospital cost information is available from HCRIS. Data for all Medicaid DSH hospitals, however, is not in this database. A misalignment of Medicaid DSH audit and reporting data and Medicare hospital cost data also exists, so we have finalized our proposal for states to report provider numbers in their annual DSH audit and reporting submissions. We will continue to evaluate utilizing HCRIS data as a potential source of total cost for purposes of future rulemaking.

*Comment:* Many commenters recommend that we rely on existing reporting mechanisms instead of requesting additional data from states, including obtaining total cost information directly from the Medicare cost reports rather than collecting directly from states through Medicaid DSH audits and reports. Some additional commenters recommended that we align the Medicaid and Medicare method for calculating and/or capturing cost.

*Response:* The Medicaid program and the Medicare program are separate programs authorized by different sections of the statute and while we try whenever possible to align the rules and reporting, it is not always possible to do so. To ensure efficient operations and to ease administrative burden on states and providers, we utilize information available to us through existing reporting. The DSH audit and reporting relies on existing financial and cost reporting tools currently used by all hospitals participating in the Medicare program and available state and hospital data. These documents include the Medicare 2552 cost report, audited hospital financial statements and accounting records, and information provided by the states' Medicaid Management Information Systems (MMIS) and the approved Medicaid State plan governing the Medicaid payments made during the audit period. The final rule requires the collection of additional information to facilitate the generation of usable data from existing mechanisms. The rule requires the calculation and collection of total cost information through cost report and Medicaid DSH audit and reporting processes to ensure data uniformity and consistency. Additionally, we will use provider numbers submitted annually by states through Medicaid DSH audits and reports to resolve a misalignment of Medicaid DSH audit and reporting data and Medicare hospital cost data.

*Comment:* Two commenters recommended that we use alternative data sources when determining total hospital costs for childrens' hospitals.

*Response:* We recognize that some childrens' hospitals may not file a Medicare 2552 cost report or may file a partial Medicare 2552 cost report. If a hospital does not file or files only a partial Medicare 2552 cost report, the state remains responsible for reporting the information which would have otherwise been available on the Medicare 2552 from each hospital to determine total cost. To meet federal DSH audit and reporting requirements, states may require such hospitals to provide the same data to the state as if they were filing the Medicare 2552.

*Comment:* One commenter recommended that we publish a preliminary collection of data that would be used for the DHRM and allow an opportunity for data correction prior to the calculation of state-specific DSH allotment reduction amounts.

*Response:* To ensure efficient operations, to ease administrative burden on states and providers, and to ensure accurate reporting, the final rule utilizes information available to us through existing reporting mechanisms. The DSH audit and reporting relies on existing financial and cost reporting tools currently used by all hospitals participating in the Medicare program and available state and hospital data. All of these data sources are subject to audit, review, or certification prior to submission to CMS. These documents include the Medicare 2552 cost report, audited hospital financial statements and accounting records, and information provided by the states' MMIS and the approved Medicaid state plan governing the Medicaid payments made during the audit period. We intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation and its data sources.

2. Comments on Future Rulemaking

*Comment:* We received many comments providing recommendations and requested considerations for the DHRM after FY 2015. The comments included recommendations to modify the definition of uncompensated care costs, recommendations to conduct studies evaluating the impact of DSH allotment reduction implementation, recommendations on factor weighting, recommendations on data sources and data collection methods, requests for engagement of the provider community prior to future rulemaking, recommendations regarding state decisions to implement the low-income adults group, and recommendations to finalize future fiscal year's DHRMs in increments.

*Response:* We appreciate all comments and recommendations regarding future rulemaking. The Affordable Care Act provides an increase in coverage options available through the Marketplace and state Medicaid programs that will coincide with the DSH allotment reductions implemented through this rule. We intend to consider the valuable input from these comments and the information that will be available to us beginning in 2014 for determining the

methods for DSH allotment reductions for FY 2016 and thereafter.

*C. Factor 1—Low DSH Adjustment Factor (LDF)*

The first factor considered in the proposed DHRM is the Low DSH Adjustment Factor identified at section 1923(f)(7)(B)(ii) of the Act, which requires that the DHRM impose a smaller percentage reduction on ''low DSH states'' that meet the criterion described in section 1923(f)(5)(B) of the Act. To qualify as a low DSH state, total expenditures under the state plan for DSH payments for FY 2000, as reported to us as of August 31, 2003, had to have been greater than zero but less than 3 percent of the state's total Medicaid state plan expenditures during the FY. Historically, low DSH states have received lower DSH allotments relative to their total Medicaid expenditures than non-low DSH states.

We proposed to apply the Low DSH Adjustment Factor (LDF) by imposing a greater proportion of the annual DSH funding reduction on non-low DSH states. The factor is calculated and applied as discussed in greater detail in the proposed rule (78 FR 28555 through 28556). We received a number of public comments on the proposed Factor 1—LDF. A discussion of these comments, with our responses, appears below.

*Comment:* One commenter agrees that the Commonwealth of Pennsylvania is appropriately classified as a non-low DSH state, expressed uncertainty regarding the future status of Pennsylvania as a non-low DSH states, and opposed the DSH allotment reductions because a greater proportion of the funding reduction is imposed on non-low DSH states.

*Response:* We agree with the commenter that Pennsylvania was correctly classified as a non-low DSH state. The statue establishes the criterion in section 1923(f)(5)(B) of the Act to classify states as low-DSH. Regarding the comments in opposition to imposing greater reductions on non-low DSH states, the proposed and final rule are consistent with the statutory direction to impose a smaller percentage DSH allotment reduction on low DSH states.

*Comment:* One commenter expressed support that low DSH states do not receive a larger percentage reduction than all other states due to the interaction with other DHRM factor requirements directed by the statute.

*Response:* We appreciate the commenter's support but note that while the proposed and final LDF is consistent with the statutory direction to impose a smaller percentage DSH allotment reduction on low DSH states, it is possible that the overall reduction percentage may be higher for a low DSH state than a non-low DSH state on the basis of other factors identified by the statute.

*Comment:* One commenter opposed the LDF and indicated that the methodology used to calculate the LDF was flawed and creates substantial disparate treatment between low DSH states and non-low DSH states. Specifically, the commenter stated that it is inappropriate to use the mean unreduced DSH allotment as a percentage of Medicaid service expenditures as a measure to compare low DSH and non-low DSH state groups. The commenter estimated that some low DSH states have a higher mean unreduced DSH allotment as a percentage of Medicaid service expenditures than some non-low DSH states and that states with the greatest such percentages would not necessarily receive greater percentage reductions than other states. The commenter recommends that CMS use a fixed LDF of 50 percent.

*Response:* This final rule does not reallocate unreduced DSH allotments calculated in section 1923(f) of the Act or alleviate all potential differences among states in existing unreduced DSH allotments. The DHRM does provide potential relief by imposing smaller percentage reductions on low DSH states which historically have received lower DSH allotments relative to their total Medicaid expenditures than non-low DSH states. This historical difference serves as the basis for assigning the LDF value. Although we considered alternate methods for determining a value, we believe that the LDF best addresses this historical difference while adhering to statutory direction.

*Comment:* A commenter recommended that CMS not rely on estimated Medicaid services expenditures and instead rely on actual expenditures as the basis for calculating the LDF due to potential inaccuracy, particularly given the potential impact of states' decisions to adopt the new low-income adult coverage group under the Medicaid program.

*Response:* We have modified the final rule to use actual expenditures instead of estimated expenditures. We believe that the use of actual expenditures for the affected year is a more appropriate method for capturing the relationship between state groups for the reduction year. Additionally, the impact of state decisions to adopt the new low-income adult coverage group will not be captured in the DHRM for FY 2014 or FY 2015.

*Comment:* One commenter identified an error in the proposed rule's illustrative table of DSH allotment reductions because it misclassified Arkansas and Arizona.

*Response:* In the illustrative table in the proposed rule, we inadvertently transposed Arkansas and Arizona. We will ensure that this error does not occur when determining final state-specific DSH allotment reduction amounts.

*Comment:* One commenter requested clarification regarding the data sources used to calculate the LDF.

*Response:* We intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation, including the additional information regarding data sources.

*D. Factor 2—Uninsured Percentage Factor (UPF)*

The second factor considered in the proposed DHRM is the Uninsured Percentage Factor (UPF) identified at section 1923(f)(7)(B)(i)(I) of the Act, which requires that the DHRM impose larger percentage DSH allotment reductions on states that have the lowest percentages of uninsured individuals. The statute also requires that the percentage of uninsured individuals is determined on the basis of data from the Census Bureau, audited hospital cost reports, and other information likely to yield accurate data, during the most recent year for which such data are available.

To determine the percentage of uninsured individuals in each state, the proposed DHRM relied on the total population and uninsured population as identified in the most recent ''1-year estimates'' data available from the ACS conducted by the Census Bureau. The Census Bureau generates ACS ''1-year estimates'' data annually based on a point-in-time survey of approximately 3 million individuals. For purposes of the proposed DHRM, we utilized the most recent ACS data available at the time of the calculation of the annual DSH allotment reduction amounts.

The UPF, as applied through the proposed DHRM, has the effect of imposing lower relative DSH allotment reductions on states that have the highest percentage of uninsured individuals. The UPF would mitigate the DSH reduction for states with the highest percentage of uninsured individuals.

The proposed UPF is determined separately for each state group as described in greater detail in the proposed rule (78 FR 28556). We proposed to utilize preliminary DSH

allotment estimates to develop the DSH reduction factors. We received a number of public comments on the proposed Factor 2—UPF. A discussion of these comments, with our responses, appears below.

*Comment:* Many commenters support the DHRM's identification of uninsured individuals based on 1-year estimates of the number of uninsured from the U.S. Census Bureau's American Community Survey.

*Response:* We are finalizing the use of 1-year estimates of the number of uninsured from the American Community Survey.

*Comment:* Many commenters expressed concern that the uninsured individual data used for the UPF may undercount the numbers of undocumented individuals as reported and estimated through the ACS.

*Response:* We received information from the Census Bureau in response to the comments. According to the Census Bureau, the foreign-born population includes anyone who is not a U.S. citizen at birth. This includes two groups: (1) Naturalized U.S. citizens; and (2) noncitizens. Noncitizens include lawful permanent residents (immigrants), temporary migrants (such as foreign students), humanitarian migrants (such as refugees and asylees), and persons not lawfully present in the United States.

The Census Bureau collects data from all foreign born who participate in its censuses and surveys, regardless of legal status. Thus, unauthorized migrants are included in ACS estimates of the total foreign-born population. However, the Census Bureau only asks foreign-born respondents if they are naturalized U.S. citizens or noncitizens, so it is not possible to tabulate separate estimates of unauthorized migrants using the ACS. The Census Bureau believes estimates of the foreign-born population in the ACS do include unauthorized immigrants. Accordingly, we have finalized our proposed use of ACS data without an adjustment in the uninsured data.

*E. Factor 3—High Volume of Medicaid Inpatients Factor (HMF)*

The third factor considered in the proposed DHRM is the High Volume of Medicaid Inpatients Factor (HMF) identified at section 1923(f)(7)(B)(i)(II)(aa) of the Act, which requires that the DHRM impose larger percentage DSH allotment reductions on states that do not target DSH payments to hospitals with the highest volumes of Medicaid inpatients. For purposes of the DHRM, the statute defines hospitals with high volumes of Medicaid patients as those defined in section 1923(b)(1)(A) of the Act. These hospitals must meet minimum qualifying requirements at section 1923(d) of the Act and have an MIUR that is at least one standard deviation above the mean MIUR for hospitals receiving Medicaid payments in the state. Every hospital that meets that definition is deemed a disproportionate share hospital and is statutorily required to receive a DSH payment. The HMF, through the proposed DHRM, provides the mitigation of the DSH reduction amount for states that have been targeting and would in the future target DSH payments to these federally-deemed hospitals.

States that have been and continue to target a large percentage of their DSH payments to hospitals that are federally-deemed as a DSH based on their MIUR would receive the lowest reduction amounts relative to their total spending. States that target the largest amounts of DSH payments to hospitals that are not federally-deemed based on MIUR would receive larger reduction amounts under this factor. The current DSH allotment amounts are unrelated to the amounts of MIUR-deemed hospitals and their DSH-eligible uncompensated care costs. By basing the HMF reduction on the amounts that states do not target to hospitals with high volumes of Medicaid inpatients, this proposed methodology incentivizes states to target DSH payments to such hospitals.

To ensure that all deemed disproportionate share hospitals receive a required DSH payments, states are already required to determine the mean MIUR for hospitals receiving Medicaid payments in the state and the value of one standard deviation above the mean. We proposed to rely on MIUR information for use in the DHRM that we intend to collect from states on an annual basis outside of this rule. When a state does not timely submit this separately required MIUR information, for purposes of this factor, we will assume that the state has the highest value of one standard deviation above the mean reported among all other states.

The calculation of the HMF will rely on extant data that should be readily available to states. The following data elements are used in the HMF calculation: the preliminary unreduced DSH allotment for each state, the DSH hospital payment amount reported for each DSH in accordance with § 447.299(c)(17), the MIUR for each DSH reported in accordance with § 447.299(c)(3), and the value of one standard deviation above the mean MIUR for hospitals receiving Medicaid payments in the state reported separately.

The proposed HMF is a state-specific percentage that is calculated separately for each state group (low DSH and non-low DSH) as described in greater detail in the proposed rule (78 FR 28556 through 28557).

Section 1923(f)(7)(B)(i) of the Act specifies that the DHRM impose larger percentage reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients. Section 1923(f)(7)(B)(i)(II)(aa) defines hospitals with high volumes of Medicaid inpatients as those defined in section 1923(b)(1)(A) of the Act.

*Comment:* Many commenters expressed support for the HMF, including specific components of the HMF methodology.

*Response:* We appreciate the commenter's support and have finalized the HMF as proposed, unless otherwise specified.

*Comment:* One commenter recommended that CMS add additional protection for hospitals that have MIURs that are significantly in excess of one standard deviation above the mean MIUR for hospitals receiving Medicaid payments in the state because these hospitals are key public services hospitals.

*Response:* We agree that these hospitals are key public services hospitals. The threshold used in the DHRM for the HMF is expressly identified by statute. The HMF already considers any state DSH payments made to hospitals that are in excess of one standard deviation above the mean as payments that are targeted consistent with the statutory MIUR threshold. Therefore, we anticipate that DHRM will incentivize and promote state targeting of DSH payments to any hospitals exceeding this threshold, including those hospitals that significantly exceed it.

*Comment:* A few commenters recommended modifications to the definition used to determine high Medicaid volume hospitals. The recommendations include allowing Medicaid discharges in addition to Medicaid days as part of the determination process and weighting the methodology to include outpatient hospital services.

*Response:* The threshold used in the DHRM for the HMF to designate a high volume Medicaid hospital is expressly identified by statute. We believe that this threshold is appropriate and anticipate that the DHRM will incentivize and promote state targeting

of DSH payments to any hospitals exceeding this threshold.

*Comment:* One commenter supports the proposed HMF, but recommends that CMS add additional protection for any hospital that has an MIUR that is at least three standard deviations above the mean MIUR for hospitals receiving Medicaid payments in the state by mandating that states make DSH payments to such hospitals for their entire hospital-specific limit.

*Response:* We designed the DHRM to preserve the considerable flexibility afforded states in setting DSH state plan payment methodologies to the extent that these methodologies are consistent with section 1923(c) of the Act and all other applicable statute and regulations. Therefore, we are not adopting the commenter's recommendation. However, we will consider further targeting in future rulemaking.

*Comment:* One commenter recommended that the DHRM rely on MIUR data derived from the original DSH payment calculation instead of actual data derived from the Medicaid DSH audits and reports.

*Response:* The proposed and final rules do not rely on Medicaid DSH audit and reporting data for MIUR data. Instead, we will rely on MIUR information that we will collect from states on an annual basis outside of this rule.

*Comment:* One commenter requested clarification regarding which MIUR data we will use for the DHRM.

*Response:* We will rely on MIUR information that we collect from states on an annual basis outside of this rule. We have already initiated collection for applicable Medicaid state plan rate years. We also intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation, including the additional information regarding data sources.

*F. Factor 4—High Level of Uncompensated Care Factor (HUF)*

The fourth factor considered in the DHRM is the HUF identified at section 1923(f)(7)(B)(i)(II)(bb) of the Act, which requires that the DHRM impose larger percentage DSH allotment reductions on states that do not target DSH payments on hospitals with high levels of uncompensated care. We proposed to rely on the existing statutory definition of uncompensated care cost used in determining the hospital-specific limit on FFP for DSH payments.

Each state must develop a methodology to compute this hospital-specific limit for each DSH hospital in the state. As defined in section 1923(g)(1) of the Act, the state's methodology must calculate for each hospital, for each FY, the difference between the costs incurred by that hospital for furnishing inpatient hospital and outpatient hospital services during the applicable state FY to Medicaid eligible individuals and individuals who have no health insurance or other source of third party coverage for the inpatient hospital and outpatient hospital services they receive, less all applicable revenues for these hospital services. This difference, if any, between incurred inpatient hospital and outpatient hospital costs and associated revenues is considered a hospital's uncompensated care cost limit, or hospital-specific DSH limit.

For purposes of this rule, we proposed to rely on this definition of uncompensated cost for the calculation of the HUF, as reported by states on the most recent available DSH audit and reporting data. For the proposed DHRM, hospitals with high levels of uncompensated care are defined based on a comparison with other Medicaid DSH hospitals in their state. Any hospital that exceeds the mean ratio of uncompensated care costs to total Medicaid and uninsured inpatient and outpatient hospital service costs within its state is considered a hospital with a high level of uncompensated care. This data is consistent with existing Medicaid DSH program definition of uncompensated care and is readily available to states and us.

The following data elements are used in the HUF calculation:

- The preliminary unreduced DSH allotment for each state;
- DSH hospital payment amounts reported for each DSH in accordance with § 447.299(c)(17);
- Uncompensated care cost amounts reported for each DSH in accordance with § 447.299(c)(16);
- Total Medicaid cost amounts reported for each DSH in accordance with § 447.299(c)(10); and
- Total uninsured cost amounts reported for each DSH in accordance with § 447.299(c)(14).

The statute also requires that uncompensated care used in this factor of the DHRM exclude bad debt. The proposed rule relied on the uncompensated care cost data derived from Medicaid DSH audit and reporting required by section 1923(f) of the Act and implementing regulations. This uncompensated care data excludes bad debt, including unpaid copayments and deductibles, associated with individuals with a source of third party coverage for the service received during the year.

The HUF is a state-specific percentage that is calculated separately for each state group (low DSH and non-low DSH) as described in greater detail in the proposed rule (78 FR 28557).

We proposed to modify DSH reporting requirements to collect total hospital cost from Medicare cost report data for all DSH hospitals. Through separately issued rulemaking for FY 2016 and thereafter, we intend to substitute total cost for the denominator in step one of the HUF calculation above. Since total cost is unavailable at this time, we solicited comment on alternatives to the use of total uncompensated care cost as the denominator to alleviate this data issue.

Understanding potential data limitations and that the proposed methodology does not precisely distinguish how states direct DSH payments among hospitals that are identified as at or above the mean uncompensated care, we solicited comments on alternative methodologies regarding state targeting of DSH payments to hospitals with high levels of uncompensated care.

*Comment:* Many commenters expressed support for the HUF, including specific components of the HUF methodology.

*Response:* We have finalized the HUF as proposed, unless otherwise specified.

*Comment:* A commenter expresses concern that the DHRM would penalize states and some of their hospitals if states target their DSH payments based on indigent care levels alone, instead of on Medicaid factors.

*Response:* We have finalized the proposed DHRM that promotes state targeting of payments to hospitals that would qualify for DSH payments based on MIUR deeming requirements defined in section 1923(b)(1)(A) of the Act. The final rule establishes this targeting factor consistent with the statutory direction to impose larger percentage reductions on states that do not target their DSH payments on hospitals with high volumes of Medicaid inpatients and do not target their DSH payments on hospitals with high levels of uncompensated care. The HMF provides mitigation of the state-specific DSH reduction amount for states that have been targeting and would in the future target DSH payments to these types of hospitals. Hospitals with high levels of indigent care levels may also have high levels of uncompensated care costs. If those hospitals have high levels of uncompensated care, the HUF will provide mitigation of the state-specific DSH reduction amount for states that have been targeting and would in the

future target DSH payments to those hospitals.

*Comment:* Some commenters recommended that the DHRM remove DSH payments made to high volume Medicaid hospitals prior to determining the amount of DSH payments made to hospitals that are not targeted to hospitals with high levels of uncompensated care.

*Response:* We have finalized the proposed DHRM that promotes, through the HUF, state targeting of payments to hospitals with high levels of uncompensated care independent of the hospitals' status as a high volume Medicaid hospital. This final rule establishes this targeting factor consistent with the statutory direction to impose larger percentage reductions on states that do not target their DSH payments on hospitals with high levels of uncompensated care.

The DHRM, through the HMF, already provides mitigation of the state-specific DSH reduction amount for states that have been targeting and would in the future target DSH payments to high volume Medicaid hospitals. If DSH payments to those hospitals were also excluded for purposes of the HUF, the protection would be afforded to states even if the hospitals had low levels of uncompensated care. This is inherently counter to this factor, which is designed to promote state targeting of DSH payment to hospitals with high levels of uncompensated care costs. If the high Medicaid volume hospitals also have high levels of uncompensated care, the HUF will also provide additional mitigation of the state-specific DSH reduction amount based on state DSH payments targeted to these hospitals.

*Comment:* A few commenters stated that the proposed HUF properly accounts for hospital size, but does not adequately account for the amount of care provided to Medicaid and uninsured patients. The commenter recommends that we further adjust each hospital's uncompensated care level by adding an additional weight to each hospital based on each hospital's total Medicaid and uninsured costs when calculating the UPF.

*Response:* Though total hospital volume is accounted for, in part, by basing HUF reductions on the total payments not targeted to hospitals that have high levels of uncompensated care, we recognize that the proposed HUF does not provide for an ideal accounting of the volume of each hospital's amount of care provided to Medicaid and uninsured patients when determining which hospitals have high levels of uncompensated care. Regardless, we are concerned that adding an adjustment for total Medicaid and uninsured volume would unfairly and adversely affect smaller hospitals. We have initiated a resolution to the identified volume concern by finalizing the collection of total cost data. We intend to substitute total cost for the denominator in step one of the HUF calculation to alleviate the identified concern for future periods.

*Comment:* Some commenters expressed concern that the HUF does not rely on an accurate measure of uncompensated care and may potentially produce paradoxical outcomes when comparing hospital levels of uncompensated care. One commenter agreed with the proposal that total cost would be a better denominator in step one of the HUF calculation, but recommended that CMS utilize Medicare cost report data to determine uncompensated care costs for FY 2014 and FY 2015.

*Response:* We recognize that the HUF may produce isolated paradoxical outcomes due to the limited data available at this time. However, we believe the method proposed does represent the most reasonable method for determining hospitals with high levels of uncompensated care costs given limited data availability. We expect any impact resulting from such outcomes to be minimal and we believe the method proposed represents the most reasonable method for determining hospitals with high levels of uncompensated care costs given limited data availability. Additionally, through separately issued rulemaking for FY 2016 and thereafter, we intend to substitute total cost for the denominator in step one of the HUF calculation to optimize the method for determining hospitals with high levels of uncompensated care.

We agree that total cost is a better denominator in step one of the HUF calculation. To address misalignment of Medicaid DSH audit and reporting data and Medicare hospital cost data, we have finalized our proposal for states to report provider numbers in their annual DSH audit and reporting submissions. Additionally, we have finalized the collection of total cost data, which will be audited consisted with other DSH audit and reporting data used by this proposed rule. We intend to utilize this information to determine the optimum method for calculating uncompensated cost for FY 2016 and thereafter.

*Comment:* One commenter expressed concerns that the HUF does not properly address the statutory direction to impose larger percentage reductions on states that do not target their DSH payments on hospitals high levels of uncompensated care because Medicaid DSH audit and reporting data does not include all hospitals in a state.

*Response:* We recognize that the DSH audit and reporting data does not include uncompensated care information for all hospitals; however, the Medicaid DSH audit and reporting data represent the only existing uncompensated care cost data consistent with the existing statutory definition of uncompensated care cost used in determining the hospital-specific limit on FFP for DSH payments. We disagree with the commenter that the HUF does not address the statutory direction to impose larger percentage reductions on states that do not target their DSH payments on hospitals high levels of uncompensated care. The proposed and final HUF is designed to promote state targeting of DSH payments to hospitals with high levels of uncompensated care based on imposing reductions based on the payments to non-high level uncompensated care hospitals.

*Comment:* Two commenters requested clarification regarding the term ''weighted mean'' used for purposes of the HUF calculation.

*Response:* We have removed the term ''weighted'' when referencing means in the final rule to alleviate potential confusion. We intend to publish a separate DHRM technical guide that provides additional information regarding the DHRM calculation.

*Comment:* Two commenters recommended that we include bad debt, including unpaid copayments and deductibles, in the definition of uncompensated care costs used for purposes of the UPF. The commenter also recommended that CMS change the treatment of bad debt when calculating the hospital-specific DSH limit at section 1923(g) of the Act.

*Response:* The statute requires that the uncompensated care definition used in the UPF exclude bad debt. We have finalized the rule to rely on the uncompensated care cost data derived from Medicaid DSH audit and reporting data. Consistent with statutory direction, this uncompensated care data excludes bad debt, including unpaid copayments and deductibles, associated with individuals with a source of third party coverage for the service received during the year. Additionally, changes to calculating the hospital-specific DSH limit are outside the scope of the proposed rule. We issued policy on hospital-specific DSH limits through separate rulemaking. The regulation does not implement or otherwise address the calculation of hospital-

specific DSH payment limits under section 1923(g) of the Act.

*Comment:* One commenter recommended that we permit the use of average hospital cost-center specific ratios instead of cost center-specific cost-to-charge ratios in the definition of uncompensated care costs used for purposes of the UPF. Two commenters also recommended the inclusion of Graduate Medical Education (GME) costs in the uncompensated care cost definition.

*Response:* The Medicaid DSH audit and reporting rule data is the only data source available to us consistent with the statutory definition of uncompensated care cost for determining hospital-specific DSH limits. We are finalizing the reliance on this data in the UPF because it represents the best available data that is consistent with program definitions. Further, changes to calculating the hospital-specific DSH limit are outside the scope of the proposed rule.

*G. Factor 5—Section 1115 Budget Neutrality Factor (BNF)*

The statute requires that we take into account the extent to which a state's DSH allotment was included in the budget neutrality calculation for a coverage expansion that was approved under section 1115 as of July 31, 2009. Prior to the implementation of this proposed rule, these states possess full annual DSH allotments as calculated under section 1923(f) of the Act. Under an approved section 1115 demonstration, however, the states may have limited authority to make DSH payments under section 1923 of the Act because all or a portion of their DSH allotment was included in the budget neutrality calculation for a coverage expansion under an approved section 1115 demonstration or to fund uncompensated care pools and/or safety net care pools. For applicable states, DSH payments under section 1923 of the Act are limited to the DSH allotment calculated under section 1923(f) of the Act less the allotment amount included in the budget neutrality calculation. If a state's entire DSH allotment is included in the budget neutrality calculation, it would have no available DSH funds with which to make DSH payments under section 1923 of the Act for the period of the demonstration.

Consistent with the statute, for states that include their DSH allotment in budget neutrality calculations for coverage expansion under an approved section 1115 demonstration as of July 31, 2009, we proposed to exclude from DSH allotment reduction, for the HMF and the HUF factors, the amount of DSH allotment that each state currently continues to divert specifically for coverage expansion in the budget neutrality calculation. Amounts of DSH allotment included in budget neutrality calculations for non-coverage expansion purposes under approved demonstrations would still be subject to reduction. Uncompensated care pools and safety net care pools are considered non-coverage expansion purposes. For section 1115 demonstrations not approved as of July 31, 2009, any DSH allotment amounts included in budget neutrality calculations, whether for coverage expansion or otherwise, under a later approval would also be subject to reduction.

We proposed to determine for each reduction year if any portion of a state's DSH allotment qualifies for consideration under this factor. To qualify annually, CMS and the state would have to have included its DSH allotment in the budget neutrality calculation for a coverage expansion that was approved under section 1115 as of July 31, 2009, and would have to continue to do so at the time that reduction amounts are calculated for each FY.

The proposed DHRM took into account the extent to which the DSH allotment for a state was included in the budget neutrality calculation approved under section 1115 as of July 31, 2009 by excluding amounts diverted specifically for a coverage expansion and automatically assigning qualifying states an average reduction amount (based on the state group) for any DSH allotment diverted for non-coverage expansion purposes and any amounts diverted for coverage expansion if the section 1115 demonstration was or is approved after July 31, 2009. DSH allotment reductions relating to two DHRM factors (the HUF and the HMF) are determined based on how states target DSH payments to certain hospitals. Since states qualifying under the budget neutrality provision would have limited or no relevant data for these two factors, we would be unable to evaluate how they spent the portion of their DSH allotment that was diverted for non-coverage expansion. Accordingly, we proposed to maintain the HUF and HMF formula for DSH payments for which qualifying states would have available data. Because we would not have DSH payment data for DSH allotment amounts diverted for non-coverage expansion, we proposed to assign average HUF and HMF reduction percentages for the portion of their DSH allotment that they were unable to use to target payments to disproportionate share hospitals. Instead of assigning the average percentage reduction to non-qualifying amounts, we considered using various alternative percentages. Additionally, for qualifying allotment amounts diverted specifically for coverage expansion, we considered applying the BNF reduction exclusion to the UPF in addition to the HMF and HUF. We solicited comment regarding the use of different percentages for the reductions to non-qualifying diversion amounts and regarding alternative BNF methodologies that may prove preferable alternatives.

Through the Affordable Care Act, the statute provided states with other, non-DSH funds to finance coverage expansions, thus limiting the need for the diverted DSH under demonstrations. Accordingly, the group of states affected by this factor today may change at a later time, depending on how and whether their coverage continues to be financed as part of their demonstrations. In addition, based on changes in the health coverage landscape, we will reevaluate this policy in future rulemaking.

*Comment:* Some commenters requested clarification regarding how CMS will determine the amount of the DSH allotment included in the calculation of budget neutrality that will not be considered an amount included for coverage expansion.

*Response:* For states whose DSH allotment was included in the budget neutrality calculation for a coverage expansion that was approved under section 1115 as of July 31, 2009, we will determine the amount of the state's DSH allotment included in the budget neutrality calculation for coverage expansion for the specific fiscal year subject to reduction. This amount is not subject to reductions under the HMF and HUF calculations. The DSH allotment amount included in the budget neutrality calculation remaining after the identification of the amount for coverage expansion is the DSH allotment amount that will be considered not included for coverage expansion. We intend to publish a separate DHRM technical guide that provides information regarding the DHRM calculation, including the additional information regarding the BNF calculation.

*Comment:* One commenter recommended that CMS modify the BNF to include safety net care pool and uncompensated care pool amounts to be treated the same as coverage expansion initiatives. Another commenter expressed support for the exclusion of uncompensated care and safety net care

pools from consideration as coverage expansion for purposes of the BNF.

*Response:* The proposed and final DHRM takes into account the extent to which the DSH allotment for a state was included in the budget neutrality calculation approved under section 1115 of the Act as of July 31, 2009, by excluding from the HMF and HUF amounts diverted specifically for a coverage expansion. Uncompensated care pools and safety net care pools do not result in coverage expansion, so they are excluded from consideration as coverage expansion for purposes of this factor. Accordingly, we finalized this provision of the rule as proposed.

*Comment:* A few commenters recommended that CMS modify the BNF date of July 31, 2009, to July 31, 2010, or to include all approved demonstrations regardless of the approval date.

*Response:* The statute requires that we take into account the extent to which a state's DSH allotment was included in the budget neutrality calculation for a coverage expansion that was approved under section 1115 of the Act as of July 31, 2009, specifically. Subsequent to this date, the Affordable Care Act provided states with other, non-DSH funds for such coverage expansions, thus limiting the need for the diverted DSH under demonstrations. Therefore, we are finalizing the rule as proposed. Based on changes in the health coverage landscape, we will reevaluate this policy in future rulemaking.

*Comment:* A commenter asked that we ensure that the DHRM gives full consideration to the statutory direction regarding the BNF and does not unfairly penalize states for which their DSH allotment was included in the budget neutrality calculation for a coverage expansion that was approved under section 1115 of the Act as of July 31, 2009.

*Response:* We do not believe that the BNF unfairly penalizes qualifying states under this factor. The proposed and final DHRM takes into account the extent to which the DSH allotment for a state was included in the budget neutrality calculation approved under section 1115 of the Act as of July 31, 2009 by excluding from the HMF and HUF amounts diverted specifically for a coverage expansion and automatically assigning qualifying states an average HMF and HUF reduction amount (based on the state group) for any DSH allotment diverted for non-coverage expansion purposes and any amounts diverted for coverage expansion if the demonstration under section 1115 of the Act was or is approved after July 31, 2009.

## IV. Provisions of the Final Regulations

The final rule is substantively the same as the method in the proposed rule, but includes some technical updates, corrections, and clarifications after reviewing the public comments as noted in section III of this final rule.

## V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

To derive average costs, we used data from the U.S. Bureau of Labor Statistics for all salary estimates. The salary estimates include the cost of fringe benefits, based on the December 2012 Employer Costs for Employee Compensation report by the Bureau.

In our May 15, 2013 (78 FR 28551), proposed rule, we solicited public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs). We received the following comment:

*Comment:* A commenter stated that the burden estimate of 4 hours to comply with the added DSH reporting requirements at § 447.299 is understated due to the amount of time required for the state to review the requirements, modify state rules, consult legal counsel, hold public hearings, and otherwise implement the new requirements.

*Response:* We disagree that the burden estimate associated with the added DSH reporting requirements should be increased and believe that our initial estimate is accurate. States are already required to submit an annual DSH audit and associated report to CMS. This rule simply adds three additional data elements (Medicaid provider number, Medicare provider number, and total cost) to the existing reporting that should be easily accessible to states.

*ICRs Regarding Reporting Requirements (§ 447.299)*

Beginning with each state's Medicaid state plan rate year 2005, for each Medicaid state plan rate year, the state must submit to CMS, at the same time as it submits the completed DSH audit required under § 455.204, the following information for each DSH hospital to which the state made a DSH payment to permit verification of the appropriateness of such payments.

The ongoing burden associated with the requirements under § 447.299 is the time and effort it would take each of the 50 state Medicaid Programs and the District of Columbia to complete the annual Medicaid DSH reporting requirements. Based on the information in this rule, we estimate that it will take an additional 4 hours per state (from 38 approved hours to 42 total hours) to complete the DSH reporting spreadsheets. Consequently, we also estimate an additional 204 (4 hr $\times$ 51 respondents) annual hours for all states and the District of Columbia and an additional aggregate cost of $8,136.54 (51 $\times$ [$51 $\times$ 2 hr] + [$28.77 $\times$ 2 hr]).

In deriving these figures, we used the following hourly labor rates and estimated the time to complete each task: $51 per hour and an additional 102 hours (204 hr $\times$ 0.5) for management and professional staff to review and prepare reports, and $28.77 per hour and an additional 102 hours (204 hr $\times$ 0.5) for office staff to prepare the reports.

The preceding requirements and burden estimates will be added to the existing PRA-related requirements and burden estimates that have been approved by OMB under OCN 0938–0746 (CMS–R–266). The revised total burden estimates equal 51 annual respondents, 51 annual responses, and 2,142 annual hours.

*Submission of PRA-Related Comments*

We have submitted a copy of this rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on this rule's information collection requirements. If you would like to

comment, please submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, (CMS–2367–F) Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

Comments must be received by October 18, 2013.

## VI. Regulatory Impact Analysis

### *A. Statement of Need*

The Affordable Care Act amended the Act by requiring aggregate reductions to state Medicaid DSH allotments annually from FY 2014 through FY 2020. This final rule delineates the DHRM to implement the annual reductions for FY 2014 and FY 2015.

### *B. Overall Impact*

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule has been designated an ''economically significant'' rule measured by the $100 million threshold, under section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared a Regulatory Impact Analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million. This final rule contains reporting requirements on states which would be $8,136.54 annually.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this rule does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $35.5 million in any 1 year. Individuals and states are not included in the definition of a small entity.

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. Since states are responsible in the management of the reduced allotments, we cannot predict the exact impact on individual hospitals. However, the aggregate estimated reduction of DSH allotment reductions at the state level is generally less than 6 percent of total Medicaid DSH allotment amounts. We estimate that the reduction in payments resulting from the DSH allotment reductions will account for significantly less than 3 to 5 percent of total hospital revenue. Therefore, we do not believe that this threshold will be reached by the requirements in this final rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We are not preparing an analysis for section 1102(b) of the Act because we do not believe that this threshold will be reached by the requirements in this final rule.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

### *C. Anticipated Effects*

#### 1. Effects on State Medicaid Programs

Effective for FY 2014, the DSH allotment reductions will have a direct effect on the ability for some or all states to maintain state-wide Medicaid DSH payments at FY 2013 levels. Federal share DSH allotments, which are published by CMS in an annual **Federal Register** notice, limit the amount of FFP in the aggregate that states can pay annually in DSH payments to hospitals. This final rule will reduce state DSH allotment amounts and therefore, will limit the states' ability to make DSH payments and claim FFP for DSH payments at FY 2013 levels. By statute, the rule will reduce state DSH allotments by $500,000,000 for FY 2014 and $600,000,000 for FY 2015. The rule will reduce total FFP claimed by states by similar amounts, although it may not equal the exact amount of the allotment reductions. At this time, we cannot anticipate how states will change their existing DSH methodologies in response to the rule, and therefore cannot provide a specific estimate of the total federal financial impact for FY 2014 and FY 2015.

The final rule utilizes a DHRM that would mitigate the negative impact on states that continue to have high percentages of uninsured and are targeting DSH payments on hospitals that have a high volume of Medicaid inpatient and on hospitals with high levels of uncompensated care.

Additionally, the final rule requires additional annual DSH reporting requirements on states. For more information regarding the effects of these requirements on states, see section V. of this final rule.

#### 2. Effects on Providers

The final rule will affect certain providers through the reduction of state DSH payments. However, we cannot estimate the impact on individual providers or groups of providers. This final rule will not affect the considerable flexibility afforded states in setting DSH state plan payment methodologies to the extent that these

methodologies are consistent with section 1923(c) of the Act and all other applicable statute and regulations. States will retain the ability to preserve existing DSH payment methodologies or to modify methodologies by submitting state plan amendments to us. Some states may determine that implementing a proportional reduction in DSH payments for all qualifying hospitals is the preferred method to account for the reduced allotment. Alternatively, states could determine that the best action is to propose a methodology that will direct DSH payments reductions to hospitals that do not have high Medicaid volume or do not have high levels of uncompensated care. Regardless, the rule incentivizes states to target DSH payments to hospitals that are most in need of Medicaid DSH funding based on their serving a high volume of Medicaid inpatients and having a high level of uncompensated care.

This final rule also does not affect the calculation of the hospital-specific DSH limit established at section 1923(g) of the Act. This hospital-specific limit requires that Medicaid DSH payments to a qualifying hospital not exceed the costs incurred by that hospital for providing inpatient and outpatient hospital services furnished during the year to Medicaid patients and individuals who have no health insurance or other source of third party coverage for the services provided during the year, less applicable revenues for those services.

Although this rule would reduce state DSH allotments, the management of the reduced allotments still largely remains with the states. Given that states would retain the same flexibility to design DSH payment methodologies under the state plan and that individual hospital DSH payment limits would not be reduced, we cannot predict whether and how states would exercise their flexibility in setting DSH payments to account for their reduced DSH allotment and how this would affect individual providers or specific groups of providers.

*D. Alternatives Considered*

The Affordable Care Act specifies the annual DSH allotment reduction amounts for FY 2014 and FY 2015. Therefore, we were unable to consider alternative reduction amounts. Alternatives to the proposed DHRM methodology are discussed through the preceding section of this rule.

*E. Accounting Statement and Table*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4/*), we have prepared an accounting statement in Table 1 showing the classification of the impacts associated with implementation of this final rule.

TABLE 1—ACCOUNTING STATEMENT

| Category | Estimates | Units | | |
|---|---|---|---|---|
| | | Year dollar | Discount rate (percent) | Period covered |
| Costs: | | | | |
| Cost of Reporting Requirement (in millions) | 0.008 | 2013 | 7 | 2014–2015 |
| | 0.008 | 2013 | 3 | 2014–2015 |
| Transfers: | | | | |
| Reductions in Disproportionate Share Hospital Allotment (in millions) | −548 | 2013 | 7 | 2014–2015 |
| | −549 | 2013 | 3 | 2014–2015 |
| From Whom to Whom | Federal Government to the States on behalf of the Beneficiaries | | | |

**List of Subjects in 42 CFR Part 447**

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

## PART 447 —PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

## Subpart E—Payment Adjustments for Hospitals That Serve a Disproportionate Number of Low-Income Patients

■ 2. Section 447.294 is added to read as follows:

**§ 447.294 Medicaid disproportionate share hospital (DSH) allotment reductions for Federal fiscal year 2014 and Federal fiscal year 2015.**

(a) *Basis and purpose.* This section sets forth the DSH health reform methodology (DHRM) for calculating State-specific annual DSH allotment reductions from Federal fiscal year 2014 and Federal fiscal year 2015 as required under section 1923(f) of the Act.

(b) *Definitions.* For purposes of this section—

*Aggregate DSH allotment reductions* mean the amounts identified in section 1923(f)(7)(A)(ii) of the Act.

*Budget neutrality factor (BNF)* is a factor incorporated in the DHRM that takes into account the extent to which the DSH allotment for a State was included in the budget neutrality calculation for a coverage expansion approved under section 1115 as of July 31, 2009.

*DSH payment* means the amount reported in accordance with § 447.299(c)(17).

*Effective DSH allotment* means the amount of DSH allotment determined by subtracting the State-specific DSH allotment reduction from a State's unreduced DSH allotment.

*High level of uncompensated care factor (HUF)* is a factor incorporated in the DHRM that results in larger percentage DSH allotment reduction for States that do not target DSH payments on hospitals with high levels of uncompensated care.

*High Medicaid volume hospital* means a disproportionate share hospital that has an MIUR at least one standard deviation above the mean MIUR for hospitals receiving Medicaid payments in the State.

*High uncompensated care hospital* means a hospital that exceeds the mean ratio of uncompensated care costs to total Medicaid and uninsured inpatient and outpatient hospital service costs for all disproportionate share hospitals within a state.

*High volume of Medicaid inpatients factor (HMF)* is a factor incorporated in

the DHRM that results in larger percentage DSH allotment reduction for States that do not target DSH payments on hospitals with high volumes of Medicaid inpatients.

*Hospital with high volumes of Medicaid inpatients* means a disproportionate share hospital that meets the requirements of section 1923(b)(1)(A) of the Act.

*Low DSH adjustment factor (LDF)* is a factor incorporated in the DHRM that results in a smaller percentage DSH allotment reduction on low DSH States.

*Low DSH State* means a State that meets the criterion described in section 1923(f)(5)(B) of the Act.

*Mean HUF reduction percentage* is determined by calculating the quotient of each state's HUF reduction amount divided by its unreduced DSH allotment, then calculating the mean for each state group, then converting the result to a percentage.

*Medicaid inpatient utilization rate (MIUR)* means the rate defined in section 1923(b)(2) of the Act.

*Non-high Medicaid volume hospital* means a disproportionate share hospitals that does not meet the requirements of section 1923(b)(1)(A) of the Act.

*State group* means similarly situated States that are collectively identified by DHRM as defined in § 447.294(e)(1).

*State-specific DSH allotment reduction* means the amount of annual DSH allotment reduction for a particular State as determined by the DHRM.

*Total Medicaid cost* means the amount for each hospital reported in accordance with § 447.299(c)(10).

*Total population* means the 1-year estimates data of the total non-institutionalized population identified by United States Census Bureau's American Community Survey.

*Total uninsured cost* means the amount reported for each DSH in accordance with § 447.299(c)(14).

*Uncompensated care cost* means the amount reported for each hospital in accordance with § 447.299(c)(16).

*Uncompensated care level* means a hospital's uncompensated care cost divided by the sum of its total Medicaid cost and its total uninsured cost.

*Unreduced DSH allotment* means the DSH allotment calculated under section 1923(f) of the Act prior to annual reductions under this section.

*Uninsured percentage factor (UPF)* is a factor incorporated in the DHRM that results in larger percentage DSH allotment reductions for States that have the lowest percentages of uninsured individuals.

*Uninsured population* means 1-year estimates data of the number of uninsured identified by United States Census Bureau's American Community Survey.

(c) *Aggregate DSH allotment reduction amounts.* The aggregate DSH allotment reduction amounts are as provided in section 1923(f)(7)(A)(ii) of the Act.

(d) *State data submission requirements.* States are required to submit the mean MIUR, determined in accordance with section 1923(b)(1)(A) of the Act, for all hospitals receiving Medicaid payments in the State and the value of one standard deviation above such mean. States must provide the data for State Plan Rate Year (SPRY) 2008, SPRY 2009, SPRY 2010, and SPRY 2011 by June 30, 2014. States must provide this data for each subsequent SPRY to CMS by June 30 of each year. To determine which SPRY's data the state must submit, subtract 3 years from the calendar year in which the data is due. For example, SPRY 2012 data must be submitted to CMS by June 30, 2015.

(e) *DHRM methodology.* Section 1923(f)(7) of the Act requires aggregate annual reduction amounts for FY 2014 and FY 2015 to be reduced through the DHRM. The DHRM is calculated on an annual basis based on the most recent data available to CMS at the time of the calculation. The DHRM is determined as follows:

(1) *Establishing State groups.* For each FY, CMS will separate low-DSH States and non-low DSH states into distinct State groups.

(2) *Aggregate DSH allotment reduction allocation.* CMS will allocate a portion of the aggregate DSH allotment reductions to each State group by the following:

(i) Dividing the sum of each State group's preliminary unreduced DSH allotments by the sum of both State groups' preliminary unreduced DSH allotment amounts to determine a percentage.

(ii) Multiplying the value of paragraph (e)(2)(i) of this section by the aggregate DSH allotment reduction amount under paragraph (c) of this section for the applicable fiscal year.

(iii) Applying the low DSH adjustment factor under paragraph (e)(3) of this section.

(3) *Low DSH adjustment factor (LDF) calculation.* CMS will calculate the LDF by the following:

(i) Dividing each State's preliminary unreduced DSH allotment by their respective total Medicaid service expenditures.

(ii) Calculating for each State group the mean of all values determined in paragraph (e)(3)(i) of this section.

(iii) Dividing the value of paragraph (e)(3)(ii) of this section for the low-DSH State group by the value of paragraph (e)(3)(ii) for the non-low DSH state group.

(4) *LDF application.* CMS will determine the final aggregate DSH allotment reduction allocation for each State group through application of the LDF by the following:

(i) Multiplying the LDF by the aggregate DSH allotment reduction for the low DSH State group.

(ii) Utilizing the value of paragraph (e)(4)(i) of this section as the aggregate DSH allotment reduction allocated to the low DSH State group.

(iii) Subtracting the value of paragraph (e)(4)(ii) of this section from the value of paragraph (e)(2)(ii) of this section for the low DSH State group; and

(iv) Adding the value of paragraph (e)(4)(iii) of this section to the value of paragraph (e)(2)(ii) of this section for the non-low DSH State group.

(5) *Reduction factor allocation.* CMS will allocate the aggregate DSH allotment reduction amount to three core factors by multiply the aggregate DSH allotment reduction amount for each State group by the following:

(i) UPF—33 and ⅓ percent.

(ii) HMF—33 and ⅓ percent.

(iii) HUF—33 and ⅓ percent.

(6) *Uninsured percentage factor (UPF) calculation.* CMS will calculate the UPF by the following:

(i) Dividing the total State population by the uninsured in State for each State.

(ii) Determining the uninsured reduction allocation component for each State as a percentage by dividing each State's value of paragraph (e)(6)(i) of this section by the sum of the values of paragraph (e)(6)(i) of this section for the respective State group (the sum of the values of all States in the State group should total 100 percent).

(iii) Determine a weighting factor by dividing each State's unreduced DSH allotment by the sum of all preliminary unreduced DSH allotments for the respective State group.

(iv) Multiply the weighting factor calculated in (e)(6)(iii) of this section by the value of each State's uninsured reduction allocation component from paragraph (e)(6)(ii) of this section.

(v) Determine the UPF as a percentage by dividing the product of paragraph (e)(6)(iv) of this section for each State by the sum of the values of paragraph (e)(6)(iv) of this section for the respective State group (the sum of the values of all States in the State group should total 100 percent).

(7) *UPF application and reduction amount.* CMS will determine the UPF

portion of the final aggregate DSH allotment reduction allocation for each State by multiplying the State's UPF by the aggregate DSH allotment reduction allocated to the UPF factor under paragraph (e)(5) of this section for the respective State group.

(8) *High volume of Medicaid inpatients factor (HMF) calculation.* CMS will calculate the HMF by determining a percentage for each State by dividing the State's total DSH payments made to non-high Medicaid volume hospitals by the total of such payments for the entire State group.

(9) *HMF application and reduction amount.* CMS will determine the HMF portion of the final aggregate DSH allotment reduction allocation for each State by multiplying the State's HMF by the aggregate DSH allotment reduction allocated to the HMF factor under paragraph (e)(5) of this section for the respective State group.

(10) *High level of uncompensated care factor (HUF) calculation.* CMS will calculate the HUF by determining a percentage for each State by dividing the State's total DSH payments made to non-High Uncompensated Care Level hospitals by the total of such payments for the entire State group.

(11) *HUF application and reduction amount.* CMS will determine the HUF portion of the final aggregate DSH allotment reduction allocation by multiplying each State's HUF by the aggregate DSH allotment reduction allocated to the HUF factor under paragraph (e)(5) of this section for the respective State group.

(12) *Section 1115 budget neutrality factor (BNF) calculation.* This factor is only calculated for States for which all or a portion of the DSH allotment was included in the calculation of budget neutrality under a section 1115 demonstration for the specific fiscal year subject to reduction pursuant to an approval on or before July 31, 2009. CMS will calculate the BNF for qualifying states by the following:

(i) For States whose DSH allotment was included in the budget neutrality calculation for a coverage expansion that was approved under section 1115 as of July 31, 2009, (without regard to approved amendments since that date) determining the amount of the State's DSH allotment included in the budget neutrality calculation for coverage expansion for the specific fiscal year subject to reduction. This amount is not subject to reductions under the HMF and HUF calculations.

(ii) Determining the amount of the State's DSH allotment included in the budget neutrality calculation for non-coverage expansion purposes for the specific fiscal year subject to reduction.

(iii) Multiplying each qualifying State's value of paragraph (e)(12)(ii) of this section by the mean HMF reduction percentage for the respective State group.

(iv) Multiplying each qualifying State's value of paragraph (e)(12)(ii) of this section by the mean HUF reduction percentage for the respective State group.

(v) For each State, calculating the sum of the value of paragraphs (e)(12)(iii) and of (e)(12)(iv) of this section.

(13) *Section 1115 budget neutrality factor (BNF) application.* This factor will be applied in the State-specific DSH allotment reduction calculation.

(14) *State-specific DSH allotment reduction calculation.* CMS will calculate the state-specific DSH reduction by the following:

(i) Taking the sum of the value of paragraphs (e)(7), (e)(9), and (e)(11) of this section for each State.

(ii) For States qualifying under paragraph (e)(12) of this section, adding the value of paragraph (e)(12)(v) of this section.

(iii) Reducing the amount of paragraph (e)(14)(i) of this section for each State that does not qualify under paragraph (e)(12)(v) of this section based on the proportion of each State's preliminary unreduced DSH allotment compared to the national total of preliminary unreduced DSH allotments so that the sum of paragraph (e)(14)(iii) of this section equals the sum of paragraph (e)(12)(v) of this section.

(f) *Annual DSH allotment reduction application.* For each fiscal year 2014 and fiscal year 2015, CMS will subtract the State-specific DSH allotment amount determined in paragraph (e)(14) of this section from that State's final unreduced DSH allotment. This amount is the State's final DSH allotment for the fiscal year.

■ 3. Section 447.299 is amended by:

■ A. Redesignating paragraph (c)(18) as (c)(21).

■ B. Adding paragraphs (c)(18), (c)(19) and (c)(20).

■ C. Revising newly redesignated paragraph (c)(21).

The additions and revisions read as follows:

**§ 447.299 Reporting Requirements.**

* * * * *

(c) * * *

(18) *Medicaid provider number.* The provider identification number assigned by the Medicaid program.

(19) *Medicare provider number.* The provider identification number assigned by the Medicare program.

(20) *Total hospital cost.* The total annual costs incurred by each hospital for furnishing inpatient hospital and outpatient hospital services.

(21) *Reporting.* States must report DSH payments made to all hospitals under the authority of the approved Medicaid State plan. This includes both in-State and out-of-State hospitals. For out-of-State hospitals, States must report, at a minimum, the information identified in § 447.299(c)(1) through (c)(6), (c)(8), (c)(9), (c)(17), (c)(18), and (c)(19).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 29, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: September 9, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2013–22686 Filed 9–13–13; 4:15 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 130627573–3796–02]**

**RIN 0648–BD39**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This rule increases the 2013 commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery and re-opens the red snapper recreational season for 2013. This final rule is intended to allow increased harvest of Gulf red snapper without increasing the risk of red snapper experiencing overfishing or jeopardizing the rebuilding plan.

**DATES:** This rule is effective October 1, 2013.

**ADDRESSES:** Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act analysis may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/rs_tac_framework/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Susan.Gerhart@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 14, 2013, NMFS published a proposed rule for the framework action and requested public comment (78 FR 49440). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Through this final rule, NMFS sets the commercial quota for red snapper at 5.610 million lb (2.545 million kg), round weight, and the recreational quota at 5.390 million lb (2.445 million kg), round weight. NMFS also re-opens the recreational fishing season for red snapper in the Gulf EEZ beginning October 1.

In the proposed rule for this action, NMFS explained that the Council's Scientific and Statistical Committee (SSC) would meet in August 2013 to review the new projections for red snapper, and was expected to provide new acceptable biological catches (ABCs) based on a constant catch scenario. The SSC did meet in August 2013 and provided the following updated ABCs: 13.5 million lb (6.1 million kg), round weight, for the 2013 fishing year, 12.8 million lb (5.8 million kg), round weight, for the 2014 fishing year, and 11.5 million lb (5.2 million kg), round weight, for the 2015 fishing year. These ABCs are based on a scenario that assumes constant catches of 11.0 million lb (5.0 million kg), round weight, for the 2013 and 2014 fishing years. If the allowable catch remained at 11.0 million lb (5.0 million kg), round weight, in 2015, the allowable catch would not exceed the new ABC set for the 2015 fishing year.

Through this final rule, the red snapper commercial quota increases by 1.295 million lb (587,402 kg), round weight. This increase will be distributed to Gulf red snapper individual fishing quota (IFQ) shareholders on or shortly after October 1, 2013.

The recreational quota increases by 1.245 million lb (564,723 kg), round weight. Under 50 CFR 622.34(b), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached. Prior to June 1 each year, NMFS projects the closing date based on the previous year's data, and notifies the public of the closing date for the upcoming season. If subsequent data indicate that the quota has not been reached by that closing date, NMFS may re-open the season.

NMFS projected the 2013 recreational quota of 4.145 million lb (1.880 million kg), round weight, would be met by June 29, 2013. Preliminary catch estimates produced by the Marine Recreational Information Program (MRIP)—using new methodology for the June season—are unexpectedly high relative to previous years, indicating the private and for-hire components of the recreational sector landed 5.8 million lb (2.631 million kg), round weight. Landings available through June, including both MRIP and headboat landings, total 6.13 million lb (2.781 million kg), round weight. The original quota, which was developed using the prior methodology, was 4.145 million-lb (1.880 million-kg), round weight. It is misleading to make a direct comparison between these numbers, however, because if the new MRIP methodology had been available to use in the 2013 stock assessment on which the current ABCs and quotas are based, then the original quotas may have been set much higher.

Overall, the new MRIP catch estimates are more accurate and less biased than those produced in past years because MRIP redesigned the Access Point Angler Intercept Survey in March 2013 to provide better coverage of the variety of fishing trips ending at different times of day. However, the new estimates only cover a single month long season, and if the new survey methodology indeed eliminated past biases, then the new estimates may not be directly comparable to the 2013 quota or other red snapper management reference points, which were based on historical catch estimates using years of data and the prior methodology. The proportion of the catch increase that may be attributed to improving the geographic and temporal coverage of sampling under the new survey methodology versus the proportion that may be due to a true increase in landings has not been determined. Additionally, MRIP, which estimates catches of many species, produces estimates more accurately over longer time frames and larger geographic areas than what is currently available for recreational red snapper management.

At this time, NMFS does not have a sufficient understanding of how to use the new MRIP landing estimates without better understanding how they fit into the broader scientific basis for red snapper management, which includes the stock assessment and the full historical times series of fishery-dependent and fishery-independent data. Evaluations are underway to better understand the relative contribution of the methodology change versus true shifts in angler behavior and landings to the unexpectedly high estimates for this year. This evaluation is still underway and will not be completed in time to be used for decisions on the season length of the October recreational red snapper season. NMFS plans to thoroughly evaluate this issue in the update assessment to be completed in early 2015. In the interim, the Southeast Fisheries Science Center (SEFSC) has determined that the best scientific information available to determine landings during the June season is the projection used to set the season length. This projection estimated that the 4.145-million lb (1.880-million kg), round weight, quota would be landed during the 28-day season.

Available data show a small increase in fishing effort Gulf-wide, no significant changes in catch rates, and an average size of red snapper for 2013 consistent with the projections. Additionally, headboat landings through June 2013 are slightly less than landings through June 2012. Therefore, NMFS has determined the best scientific information available on which to base a decision whether or not to proceed with a fall season is the analysis projecting the number of days available for a supplemental season with the 1.245 million-lb (564,723-kg), round weight, increase in the recreational quota. There is uncertainty in the projection, because it is based on assumptions about effort levels, catch-per-unit effort, and average weights for landed fish. Because the SEFSC could not verify these assumptions with actual estimates, due to the issues outlined above, they recommend that this uncertainty be factored into decisions about season length for the fall season.

The 21 days originally projected for the supplemental season were based on assuming catch rates (landings per day)

during fall would be 50 percent less than the catch rates projected for summer. However, during public testimony at the Council's August 2013 meeting, for-hire business owners indicated they were booked for the supplemental season. Additionally, comments received on the proposed rule indicated many private anglers were planning fishing trips during October, leading NMFS to determine there may be greater participation during this fall than might be expected based on previous years. Given questions about the new data, the past performance of the fishery, the increase in fishing effort in June, and the expectation of higher than normal effort during the fall, NMFS prefers to be cautious in deciding for how long to re-open the recreational fishing season. It would not be realistic to assume fall catch rates will be the same as in the summer, due to children being in school, the possibility of inclement weather, and other recreational opportunities available to the public, such as hunting and football. Therefore, catch rates for fall are assumed to be 75 percent of summer catch rates, which allows for 14 days of fishing.

Based on the increase in the recreational quota implemented by this final rule and the analysis of the fall catch rates, NMFS has determined that the recreational sector may re-open for an additional 14 days. The method for calculating this fall season length can be found in SERO–LAPP–2013–05 at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/rs_tac_framework/documents/pdfs/gulf_rs_fall_season.pdf*. NMFS will re-open the recreational fishing season at 12:01 a.m., October 1, 2013, as approved by the Council. NMFS will close recreational harvest of red snapper in the Gulf EEZ at 12:01 a.m., local time, October 15, 2013, and it will remain closed until the start of the next fishing season. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero. In addition, a person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued must also abide by these closure provisions in state waters.

**Comments and Responses**

NMFS received a total of 78 public comments on the proposed rule; 4 from organizations and the rest were from individuals. Fourteen commenters submitted suggestions for the reef fish fishery that were outside the scope of the framework and the proposed rule, including comments related to other aspects of red snapper management such as changing the size limit, reallocation between sectors, regional management, increasing the bag limit, establishing a split recreational season, establishing a charter IFQ program, changing the dates of the regular recreational season, and establishing a recreational tag system. Two comments expressed general support for the rule. Specific comments related to the actions contained in the framework and the proposed rule as well as NMFS' respective responses are summarized below.

*Comment 1:* Many commenters supported increasing the allowable catch to 11.0 million lb (5.0 million kg). Most described seeing more red snapper than ever before. Some support a conservative approach to developing the recommended allowable catch with a goal of trying to stabilize the seasonal fishing opportunities.

*Response:* NMFS agrees with the Council's decision to increase the allowable catch to 11.0 million lb (5.0 million kg), round weight. The Council's decision was based on a new stock assessment and is intended to allow the greatest increase in the commercial and recreational quotas while ensuring constant or increasing quotas for at least the next 3 years.

*Comment 2:* Two commenters supported increasing the quota, but felt the increase is too conservative and could be much more.

*Response:* NMFS disagrees that the Council should have selected an allowable catch that is greater than 11.0 million lb (5.0 million kg), round weight. The Council considered alternatives that would have set the 2013 allowable catch greater than 11.0 million lb (5.0 million kg), round weight, but would have then required a decrease in the allowable catch for 2014 and 2015. During public testimony at Council meetings, a majority of stakeholders supported setting management measures that would bring stability to both the commercial and recreational sectors. The Council agreed with stakeholders that a constant catch strategy would provide the greatest economic benefit over the next 3 years, and determined that by foregoing some catch in 2013, higher allowable catches could be set for 2014 and 2015, and catch could be held relatively constant.

*Comment 3:* Two commenters supported the allowable catch increase only for 1 year. They believe this to be important because Amendment 28 to the FMP includes a review of the red snapper allocation between the commercial and recreational sectors and if the Council and NMFS determine an adjustment of the sector allocation is necessary, the allowable catch could be divided up differently in subsequent years.

*Response:* NMFS does not agree that it is necessary to limit the increase to 1 year. Since 2010, the allowable catches for red snapper have increased annually. Through each rulemaking to revise the red snapper allowable catches, the allowable catch increases were set without a time limit; however, the Council may change the allowable catches at any time in response to new information. The Council is currently developing Amendment 28 to the FMP and will determine if revising the allocation between the sectors is appropriate. Setting the allowable catch at 11.0 million lb (5.0 million kg), round weight, for consecutive fishing years does not preclude the Council from changing the allocation during that time period.

*Comment 4:* Some commenters supported increasing the allowable catch, but felt the total increase should go to the recreational sector.

*Response:* Allocation of the allowable catch between the commercial and recreational sectors was established in Amendment 1 to the FMP (55 FR 2078, January 22, 1990). As stated above, the Council is considering reallocation of the allowable catch between the sectors in Amendment 28 to the FMP. Until a change is made to the FMP, the allowable catch will continue to be allocated with 49 percent to the recreational sector and 51 percent to commercial sector.

*Comment 5:* Two commenters supported increasing the commercial and recreational quotas, but recommended the Council apply the guidance in its ACL/ACT control rule directly to each sector, providing commercial and recreational management buffers of 0 percent and 15–20 percent, respectively. The commenters stated that the failure to include meaningful accountability measures for the recreational sector, including a buffer specific to the recreational sector, ignores the history of overharvesting in the recreational sector. This will result in another de facto reallocation from the commercial to the recreational sector that is inconsistent with the apportionment between those sectors as established by the FMP.

*Response:* NMFS disagrees that the Council should have applied the ACL/ACT control rule and set an ACT 15–20 percent below the recreational quota. Although the recreational quota has been exceeded in prior years, the Council determined that applying the buffer recommended by the control rule

was not necessary to ensure that the adjusted 2013 recreational quota is not exceeded. NMFS agrees with the Council's determination. The decision on a 2013 fall recreational season was based on projections of how many days would be needed to harvest the additional 1.245 million lb (564,723 million kg), round weight. The projections used biological data and landings that are more updated than what was used for projections in prior years and are based on more robust models. Recreational red snapper harvest rates and average sizes have been changing rapidly in response to stock rebuilding. Past projections underestimated average fish weights and daily angler catch rates, resulting in projections overestimating the number of days necessary to harvest the recreational quota. Projection models were improved this year to account for rapidly increasing angler catch rates and fish weights. This is supported by data from the June season showing that average red snapper weights were not significantly different than those used in the projections.

Additionally, the most recent assessment indicates the population growth rate is slowing, and appears to be stabilizing in terms of recruitment and fish size. Because the red snapper population appears to be stabilizing and the 2013 projection model is more robust and contains more updated data, NMFS expects the projections to more accurately predict the number of days needed to harvest the additional recreational quota. In addition, NMFS has acted conservatively and determined that the fall season should open for only 14-days as opposed to the 21-days originally projected. This will further help ensure that the recreational harvest is constrained to the quota.

*Comment 6:* Some commenters did not believe the data used for decisions on red snapper management were appropriate; however, none of these commenters concluded with support or opposition to the proposed allowable catch increase. Most commenters felt that the population is healthier and in greater numbers than what NMFS data show. Some also believe the average size of red snapper is getting larger.

*Response:* In 2013, a benchmark assessment (SEDAR 31) was completed for Gulf red snapper. Stock assessment procedures involve a wide variety of interest groups such as fishermen, dealers, and environmental groups, as well as fishery scientists, to ensure the assessment is based on the best available scientific information and methodologies. SEDAR 31 shows that red snapper numbers and size are increasing and that red snapper are not undergoing overfishing, but that red snapper remains overfished. However, the assessment also indicates that adequate progress is being made to rebuild the stock to the target rebuilding level by 2032, the end of the rebuilding plan.

*Comment 7:* Many commenters supported re-opening the recreational fishing season in October. An October season would restore the industry and attract fishermen from all over the southeast back to the Gulf coast region. They felt the current red snapper population could easily support the proposed October re-opening without damage to the fishery. Several stated that the weather was bad for sports fisherman during the early season, and very few days were fishable. Most felt that the result will be a positive economic impact for every sector of the tourism industry and a welcome opportunity for loyal fishing visitors.

*Response:* NMFS agrees that a re-opening of the recreational fishing season would have a positive benefit for anglers and communities. Increasing operating costs and the down-turn in the national economy have reduced business for for-hire vessel owners and support industries for private anglers (bait shops, etc.). Any additional opportunity for red snapper fishing should improve this situation. Because the quotas are consistent with the rebuilding plan for red snapper, the recreational sector can be re-opened without significant adverse impacts to the stock.

*Comment 8:* Some commenters supported re-opening the recreational fishing season on weekends only or on weekends plus Fridays and/or Mondays. The majority of recreational fisherman work during the week and therefore cannot fish during the week. This would also lengthen the season so that storms and rough water conditions would not have such a devastating effect on the coastal economies.

*Response:* The Council chose to hold the supplemental season on consecutive days after listening to public testimony at its July 2013 meeting. Although the Council heard testimony in favor of both continuous and weekend-only seasons, the majority of participants preferred a continuous season beginning October 1. NMFS agrees that a continuous season allows for more total days of fishing because effort is lower during weekdays, and provides opportunity for people who fish on week days as well as those that fish on weekends.

*Comment 9:* Two commenters stated that the economic discussion in the proposed rule failed to provide adequate analysis of the economic effects on private anglers and shore-side businesses associated with private recreational fishing.

*Response:* The economic effects on private anglers and the shore-side businesses associated with private recreational fishing are not discussed in the proposed rule because the information on the expected economic effects provided in the proposed rule was limited to the requirements of the Regulatory Flexibility Act (RFA). The RFA requires an analysis of anticipated economic impacts on small entities that are directly regulated. Private anglers are not considered small entities under the RFA and the shore-side businesses associated with private recreational angling are not being directly regulated by the rule. The economic impacts on private anglers and the shore-side businesses associated with private recreational fishing were evaluated in the framework action, which, as noted in the proposed rule, is available on the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html.*

**Classification**

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of red snapper and is consistent with the framework action, the FMP, the Magnuson-Stevens 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 that this rule, if adopted, would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This rule is expected to directly affect commercial and for-hire vessels that harvest red snapper. In addition to needing red snapper IFQ allocation, a commercial reef fish permit is required to sell red snapper and to harvest red snapper in excess of the bag limit in the Gulf EEZ. An estimated 888 vessels possess a valid (non-expired) or renewable commercial reef fish permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after permit expiration. However, over the period 2007–2011, an average of only 333 vessels per year recorded commercial harvests of red snapper. As a result, for

the purpose of this assessment, the number of potentially affected commercial vessels is estimated to range from 333–888. The average commercial vessel in the Gulf reef fish fishery is estimated to earn approximately $50,000 (2011 dollars) in annual gross revenue, while the average commercial vessel with red snapper landings is estimated to earn approximately $96,000 in annual gross revenue.

A Federal reef fish for-hire vessel permit is required for for-hire vessels to harvest red snapper in the Gulf EEZ. On June 24, 2013, 1,353 vessels had a valid or renewable reef fish for-hire permit. The for-hire fleet is comprised of charter vessels, which charge a fee on a per-vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the for-hire permit application collects information on the primary method of operation, the resultant permit itself does not identify the permitted vessel as either a headboat or a charter vessel, operation as either a headboat or charter vessel is not restricted by the permitting regulations, and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the NMFS Southeast Fisheries Science Center that the vessel primarily operates as a headboat. Seventy vessels were registered in the SHRS as of March 1, 2013. As a result, 1,283 of the vessels with a valid or renewable reef fish for-hire permit are expected to operate as charter vessels. The average charter vessel is estimated to earn approximately $80,000 (2011 dollars) in annual gross revenue and the average headboat is estimated to earn approximately $242,000 in annual gross revenue.

NMFS has not identified any other small entities that will be directly affected by this rule.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $19.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. This receipts threshold is the result of a final rule issued by the SBA on June 20, 2013, that increased the size standard for Finfish Fishing from $4.0 to $19.0 million (78 FR 37398). The receipts threshold for a business involved in the for-hire fishing industry is $7.0 million (NAICS code 487210, fishing boat charter operation). This receipts threshold has not been changed as a result of recent review by the SBA. All commercial and for-hire vessels expected to be directly affected by this rule are believed to be small business entities.

This rule will increase the red snapper commercial quota by 1.295 million lb (587,402 kg), round weight, and the red snapper recreational quota by 1.245 million lb (564,723 kg), round weight. The increase in the commercial quota is expected to result in an increase in gross revenue (ex-vessel revenue minus the 3-percent cost recovery fee) for commercial vessels that harvest red snapper of approximately $4.81 million (2011 dollars), or approximately $5,417–$14,444 per vessel ($4.81 million/888 vessels = $5,417 per vessel; $4.81 million/333 vessels = $14,444 per vessel). The expected range in the increase in gross revenue per vessel is equal to approximately 10.8 percent ($5,417/$50,000) and 15.1 percent ($14,444/$96,000) increases in the average annual gross revenue per vessel, respectively.

The increase in the recreational quota is expected to result in an increase in net operating revenue (gross revenue minus operating costs except for labor) for for-hire businesses of approximately $3.361 million (2011 dollars) for charter vessels and approximately $3.765 million for headboats. The projected increase in net operating revenue for charter vessels is equal to approximately $2,600 per vessel ($3.361 million/1,283 vessels), or approximately 3.3 percent ($2,600/$80,000) of average annual gross revenue per vessel. For headboats, the projected increase in net operating revenue would be equal to approximately $53,800 per vessel ($3.765 million/70 vessels), or approximately 22.2 percent ($53,800/$242,000) of average annual gross revenue per vessel.

The information provided above supports a determination that this rule will have beneficial effects on affected small entities, and therefore will not have a significant adverse economic impact on a substantial number of small entities. An initial regulatory flexibility analysis (IRFA) was prepared for the proposed rule, and the resultant analysis concluded the same finding of positive economic impacts. No challenge of this determination was received through public comment of the proposed rule. However, two comments on the proposed rule stated that the economic discussion failed to provide adequate analysis of the economic effects on private anglers and shore-side businesses associated with private recreational fishing. The economic effects of the proposed rule on these sectors were evaluated for and provided in the framework action. The economic effects on private anglers and the shore-side businesses associated with private recreational fishing are not discussed in the proposed rule because the information on the expected economic effects provided in the proposed rule was limited to the requirements of the RFA. The RFA requires an analysis of anticipated economic impacts on small entities that are directly regulated. Private anglers are not small entities under the RFA and the shore-side businesses associated with private recreational fishing are not being directly regulated by the rule. The economic impacts on private anglers and the shore-side businesses associated with private recreational fishing were evaluated in the framework action, which, as noted in the proposed rule, is available on the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html*.

No additional issues associated with the economic analysis contained in the proposed rule were raised through public comment. A summary of all the comments received is provided in the previous section of this preamble. No changes were made to this final rule as a result of these comments.

Because this rule will have beneficial effects on affected small entities, a final regulatory flexibility analysis was not required or prepared. Copies of the RIR and IRFA are available (see **ADDRESSES**).

The NOAA Assistant Administrator for Fisheries (AA) waives the 30-day in effectiveness of the management measures contained in this final rule under 5 U.S.C. 553(d)(1) because it is a substantive rule that relieves a restriction on the regulated community. The AA also finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because it would be contrary to the public interest. The Council voted at its July Council meeting to re-open the recreational red snapper fishing season on October 1, 2013, if NMFS determined that additional harvest was available. The Council intended to provide recreational red snapper fishermen as much advanced notice as possible in order to plan their business practices for a fall re-opening. Because NMFS has determined that additional harvest of red snapper is available for the 2013 fishing year, re-opening recreational

harvest on October 1, 2013, is necessary. In addition, some fishermen have already booked their fishing trips for an October 1 re-opening and planned their business practices accordingly. Therefore, if NMFS were to delay the effectiveness of this final rule to a date after October 1, 2013, those trips would need to be re-booked and fishing opportunities could be foregone. This could cause confusion among fishermen, disrupt their business plans, and cause them to incur additional expenses.

Further, this rule provides benefits to the public because it increases commercial and recreational quotas for Gulf red snapper and it will benefit fishermen to realize these increases without delay. The commercial sector will realize these increases through additional shares and allocation towards their IFQs and the recreational sector will realize these increases in additional fishing days. This final rule provides fishermen the opportunity to harvest additional red snapper without jeopardizing the rebuilding plan. For all of these reasons, the AA waives the 30-day delay in effectiveness of this final rule.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Gulf, Quotas, Red Snapper.

Dated: September 12, 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 § 622.39, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

**§ 622.39 Quotas.**

* * * * *

(a) * * *

(1) * * *

(i) *Commercial quota for red snapper*—5.610 million lb (1.957 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper*—5.390 million lb (1.880 million kg), round weight.

* * * * *

[FR Doc. 2013–22701 Filed 9–13–13; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 120918468–3111–02]**

**RIN 0648–XC875**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2013 total allowable catch of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), September 16, 2013, through 1200 hours, A.l.t., October 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management 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.

The C season allowance of the 2013 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 9,378 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 915 mt to reflect the total overharvest of the B season allowance in Statistical Area 630. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 630 is 8,463 mt (9,378 mt minus 915 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2013 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,263 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**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) and 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 closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 12, 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: September 13, 2013.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–22704 Filed 9–13–13; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 78, No. 181
Wednesday, September 18, 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.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 312

**RIN 3084–AB20**

## Children's Online Privacy Protection Rule Safe Harbor Proposed Self-Regulatory Guidelines; kidSAFE Seal Program Application for Safe Harbor

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Request for public comment.

**SUMMARY:** The Federal Trade Commission requests public comment concerning the proposed self-regulatory guidelines submitted by the kidSAFE Seal Program (''kidSAFE''), owned and operated by Samet Privacy, LLC, under the safe harbor provision of the Children's Online Privacy Protection Rule.

**DATES:** Written comments must be received on or before October 18, 2013.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''kidSAFE Application for Safe Harbor, Project No. P–135418'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/coppakidsafeapp*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex E), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Kristin Cohen, Attorney, (202) 326–2276, or Peder Magee, Attorney, (202) 326–3538, Division of Privacy and Identity Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

### Section A. Background

On October 20, 1999, the Commission issued its final Rule pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq,* which became effective on April 21, 2000.[1] On December 19, 2012, the Commission amended the Rule, and these amendments became effective on July 1, 2013.[2] The Rule requires certain Web site operators to post privacy policies and provide notice, and to obtain verifiable parental consent, prior to collecting, using, or disclosing personal information from children under the age of 13.[3] The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[4]

Pursuant to Section 312.11 of the Rule, kidSAFE has submitted proposed self-regulatory guidelines to the Commission for approval. The full text of the proposed guidelines is available on the Commission's Web site, at *www.ftc.gov.*

### Section B. Questions on the Proposed Guidelines

The Commission is seeking comment on various aspects of the proposed guidelines, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Each response should cite the number and subsection of the question being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comments on any or all of the provisions in the proposed guidelines. For each provision commented on please describe (a) the impact of the provision(s), including benefits and costs, if any, and (b) what alternatives, if any, kidSAFE should consider, as well as the costs and benefits of those alternatives.

2. Do the provisions of the proposed guidelines governing operators' information practices provide ''the same or greater protections for children'' as those contained in Sections 312.2–312.10 of the Rule?[5] Where possible, please cite the relevant sections of both the Rule and the proposed guidelines.

3. Are the mechanisms used to assess operators' compliance with the proposed guidelines effective?[6] If not, please describe (a) whether and how the assessment mechanisms could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the proposed guidelines effective?[7] If not, please describe (a) whether and how the incentives could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the proposed guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) whether and how the dispute resolution process could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

6. Does kidSAFE have the capability to run an effective safe harbor program? Specifically, can kidSAFE effectively conduct initial and continuing assessments of operators' fitness for membership in its program in light of its business model and technological capabilities and mechanisms?[8] If not, please describe (a) whether and how the program could be modified to ensure that kidSAFE could run it effectively, and (b) the costs and benefits of those modifications.

### Section C. Invitation To Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 18, 2013. Write ''kidSAFE Application for Safe Harbor, Project No. P–135418'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of

[1] 64 FR 59888 (1999).

[2] 78 FR 3972 (2013).

[3] 16 CFR Part 312.

[4] *See* 16 CFR 312.11; 78 FR at 3995–3996, 4012–4013.

[5] *See* 16 CFR 312.11(b)(1); 78 FR at 4013.

[6] *See* 16 CFR 312.11(b)(2); 78 FR at 4013.

[7] *See* 16 CFR 312.11(b)(3); 78 FR at 4013.

[8] *See* 16 CFR 312.11(c)(1).

discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[9] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/coppakidsafeapp*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''kidSAFE Application for Safe Harbor, Project No. P–135418'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex E), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 18, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2013–22638 Filed 9–17–13; 8:45 am]

**BILLING CODE 6750–01–P**

[9] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 1 and 16

**[Docket Nos. FDA–2011–N–0143 and FDA–2011–N–0146]**

## Food and Drug Administration Food Safety Modernization Act: Proposed Rules on Foreign Supplier Verification Programs and the Accreditation of Third-Party Auditors/Certification Bodies; Public Meetings

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

**ACTION:** Notification of public meetings.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing two public meetings to discuss two proposed rules aimed at strengthening assurances that imported food meets the same safety standards as food produced domestically. The Foreign Supplier Verification Programs (FSVP) proposal establishes requirements for importers to verify that their foreign suppliers are implementing the modern, prevention-oriented food safety practices called for by the Food Safety Modernization Act (FSMA) and achieving the same level of food safety as domestic growers and processors. The second proposed rule on the Accreditation of Third-Party Auditors/Certification Bodies would strengthen the quality, objectivity, and transparency of foreign food safety audits on which many U.S. food companies and importers currently rely to help manage the safety of their global food supply chains. The purpose of these public meetings is to solicit oral stakeholder and public comments on the proposed rules and to inform the public about the rulemaking process (including how to submit comments, data, and other information to the rulemaking dockets), and to respond to questions about the proposed rules.

**DATES:** See section II, ''How to Participate in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document for date and time of the public meetings, closing dates for advance registration, and information on deadlines for submitting either electronic or written comments to FDA's Division of Dockets Management.

**ADDRESSES:** See section II, ''How to Participate in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** *For questions about registering for the meetings, to register by phone, or to submit a notice of participation by mail, FAX, or email:* Lauren Montgomery, Teya Technologies, LLC, 101 East 9th Ave., Suite 9B, Anchorage, Alaska 99501, 443–833–4297, FAX: 907–562–5497, email: *lauren.montgomery@teyatech.com.*

*For general questions about the meetings, to request an opportunity to make an oral presentation at the public meetings, to submit the full text, comprehensive outline, or summary of an oral presentation, or for special accommodations due to a disability, contact:* Juanita Yates, Center for Food Safety and Applied Nutrition (HFS–009), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1731, email: *juanita.yates@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

FSMA (Pub. L. 111–353), was signed into law by President Obama on January 4, 2011, to better protect public health by helping to ensure the safety and security of the food supply. FSMA amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to establish the foundation of a modernized, prevention-based food safety system. Among other things, FSMA requires FDA to issue regulations requiring preventive controls for human food and animal food, set standards for produce safety, and require importers to have a program to verify that the food products they bring into the United

States are produced in a manner consistent with U.S. standards.

FSMA was the first major legislative reform of FDA's food safety authorities in more than 70 years, even though FDA has increased the focus of its food safety efforts on prevention for more than a decade. In the **Federal Register** of January 16, 2013 (78 FR 3504 and 78 FR 3646), FDA announced the establishment of two dockets so that the public can review the produce safety proposed rule and the preventive controls proposed rule for human food and submit comments to the Agency. These proposed rulemakings were the first of several key proposals in furtherance of FSMA's food safety mandate. For information on the produce safety proposed rule, the preventive controls rule, and related fact sheets, see FDA's FSMA Web page located at *http://www.fda.gov/Food/GuidanceRegulation/FSMA/default.htm*.

In the **Federal Register** of July 29, 2013 (78 FR 45730 and 78 FR 45782), FDA announced the second set of FSMA proposed rules and the establishment of two additional dockets so that the public can review the proposals on FSVP and the Accreditation of Third-Party Auditors/Certification Bodies and submit comments to the Agency. Under the proposed FSVP rule, those importing FDA-regulated food into the United States will be held accountable for verifying that their suppliers produce food in a manner consistent with U.S. standards. Under the proposed rule that would establish the Accreditation of Third-Party Auditors/Certification Bodies program, the FDA would recognize accreditation bodies based on certain criteria such as competency and impartiality. The accreditation bodies, which could be foreign governments or their agencies or private companies, would in turn accredit third-party auditors to audit and issue certifications for foreign food facilities and food.

FDA is announcing a series of public meetings entitled ''The Food Safety Modernization Act Public Meetings on Proposed Rules for Foreign Supplier Verification Programs (FSVP) and for the Accreditation of Third-Party Auditors/Certification Bodies for Imported Food'' so that the food industry, consumers, foreign governments, and other stakeholders can better evaluate and comment on the proposals. These meetings, following the Washington, DC public event on September 19 and 20, 2013, are the final two meetings FDA plans to hold during the proposed rules' comment period. All three public meetings will have the same agenda and are intended to facilitate and support the proposed rules' evaluation and commenting process.

## II. How To Participate in the Public Meetings

FDA is holding the public meetings on the FSVP and the Accreditation of Third-Party Auditors/Certification Bodies proposed rules to inform the public about the rulemaking process, including how to submit comments, data, and other information to the rulemaking docket; to respond to questions about the proposed rules; and to provide an opportunity for interested persons to make oral presentations. Due to limited space and time, FDA encourages all persons who wish to attend the meetings to register in advance. There is no fee to register for the public meetings, and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Onsite registration will be accepted, as space permits, after all preregistered attendees are seated.

Those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting are asked to submit a request and to provide the specific topic or issue to be addressed. Due to the anticipated high level of interest in presenting public comment and limited time available, FDA is allocating 3 minutes to each speaker to make an oral presentation. Speakers will be limited to making oral remarks; there will not be an opportunity to display materials such as slide shows, videos, or other media during the meeting. If time permits, individuals or organizations that did not register in advance may be granted the opportunity to make an oral presentation. FDA would like to maximize the number of individuals who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their opinions at the meeting.

FDA encourages persons and groups who have similar interests to consolidate their information for presentation by a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the approximate time their presentation is scheduled to begin, and remind them of the presentation format (i.e., 3-minute oral presentation without visual media).

While oral presentations from specific individuals and organizations will be necessarily limited due to time constraints during the public meeting, stakeholders may submit electronic or written comments discussing any issues of concern to the administrative record (the docket) for the rulemaking. All relevant data and documentation should be submitted with the comments to the relevant docket i.e., FSVP, Docket No. FDA–2011–N–0143, or accreditation of third-party auditors, Docket No. FDA–2011–N–0146.

Table 1 of this document provides information on participation in the public meetings:

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS TO THE RULEMAKING DOCKETS

| | Date | Electronic address | Address | Other information |
|---|---|---|---|---|
| Public meeting ..... | October 10, 2013, from 8:30 a.m. to 5 p.m. and October 11, 2013, from 8:30 a.m. to 12:30 p.m. | | Hyatt Regency Miami, 400 SE Second Ave., Miami, FL 33131. | Onsite registration both days from 8 a.m.–8:30 a.m. |
| Advance registration .. | by October 1, 2013 .... | Individuals who wish to participate in person are asked to preregister at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm*. | We encourage you to use electronic registration if possible [1]. | There is no registration fee for the public meetings. Early registration is recommended because seating is limited. |

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETINGS AND ON SUBMITTING COMMENTS TO THE RULEMAKING DOCKETS—Continued

| | Date | Electronic address | Address | Other information |
|---|---|---|---|---|
| Request to make a Public Comment. | by September 24, 2013. | *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm* [2]. | | Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided. |
| Request special accommodations due to a disability. | by September 24, 2013. | Juanita Yates, email: *juanita.yates@fda.hhs.gov*. | See **FOR FURTHER INFORMATION CONTACT**. | |
| Submit electronic or written comments. | November 26, 2013 ... | Docket Nos. FDA–2011–N–0143 and FDA–2011–N–0146. | | |
| Public meeting ..... | October 22, 2013, from 8:30 a.m. to 5 p.m. and October 23, 2013, from 8:30 a.m. to 12:30 p.m.. | | Hilton Long Beach & Executive Meeting Center, 701 West Ocean Blvd., Long Beach, CA 90831. | Onsite registration both days from 8 a.m.–8:30 a.m. |
| Advance registration .. | by October 8, 2013 .... | Individuals who wish to participate in person are asked to preregister at *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm*. | We encourage you to use electronic registration if possible [1]. | There is no registration fee for the public meetings. Early registration is recommended because seating is limited. |
| Request to make a Public Comment. | by October 1, 2013 .... | *http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm* [2]. | | Requests made on the day of the meeting to make an oral presentation will be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided. |
| Request special accommodations due to a disability. | by October 1, 2013 .... | Juanita Yates, e-mail: *juanita.yates@fda.hhs.gov*. | See **FOR FURTHER INFORMATION CONTACT**. | |
| Submit electronic or written comments. | November 26th, 2013 | Docket Nos. FDA–2011–N–0143 and FDA–2011–N–0146. | | |

[1] You may also register via email, mail, or FAX. Please include your name, title, firm name, address, and phone and FAX numbers in your registration information and send to: Lauren Montgomery, Teya Technologies, LLC, 101 East 9th Ave., Suite 9B, Anchorage, Alaska 99501, 443–833–4297, FAX: 907–562–5497, email: *lauren.montgomery@teyatech.com*. Onsite registration will also be available.

[2] You may also request to make an oral presentation at the public meeting via email. Please include your name, title, firm name, address, and phone and FAX numbers as well as the full text, comprehensive outline, or summary of your oral presentation and send to: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1731, email: *juanita.yates@fda.hhs.gov*.

## III. Comments, Transcripts, and Recorded Video

Information and data submitted voluntarily to FDA during the public meeting will become part of the administrative record for the relevant rulemaking and will be accessible to the public at *http://www.regulations.gov*. The transcript of the proceedings from the public meeting will become part of the administrative record for each of the rulemakings. Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov* and at FDA's FSMA Web site at: *http://www.fda.gov/Food/GuidanceRegulation/FSMA/default.htm*. It may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: September 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–22655 Filed 9–17–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF DEFENSE

## Department of the Army, Corps of Engineers

## 33 CFR Part 334

## York River and the Naval Weapons Station Yorktown-Cheatham Annex, Yorktown, Virginia; Danger Zone

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing to establish a danger zone in the waters of the York River off Cheatham Annex, in York County, Virginia. The Cheatham Annex Small Arms Training Center is used by more than 50 active Navy, reserve Navy and active Marine Corps units. The proposed danger zone is necessary to protect the public from hazards associated with the small arms fire operations.

**DATES:** Written comments must be submitted on or before October 18, 2013.

**ADDRESSES:** You may submit comments, identified by docket number COE–2013–0012, by any of the following methods:

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

*Email: david.b.olson@usace.army.mil.* Include the docket number, COE–2013–0012, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE–2013–0012. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that 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 regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Mr. Robert Berg, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7793.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 to add a permanent danger zone, in the waters of the York River off Cheatham Annex, York County, Virginia. The proposed danger zone is necessary to protect the public from hazards associated with small arms fire operations.

### Procedural Requirements

*a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the proposed danger zone would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

*d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.285 to read as follows:

**§ 334.285 York River and the Naval Weapons Station Yorktown-Cheatham Annex, Yorktown, Virginia; danger zone.**

(a) *The area.* The waters within an area beginning at mean high water on the shore at the facility located at latitude 37°17′33.10″ N, longitude 76°36′19.06″ W; then northeast to a point in the York River at latitude 37°18′36.65″ N, longitude 76°34′39.01″ W; thence south, southeast to latitude 37°17′59.37″ N, longitude 76°34′13.65″ W; then southwest to a point on the shore located at latitude 37°17′26.75″ N, longitude 76°36′14.89″ W.

(b) *The regulations.* (1) Vessels and persons may transient this area at any time. No vessel or persons shall anchor, fish or conduct any waterborne activities within the danger zone established in accordance with this regulation any time live firing exercises are being conducted.

(2) Anytime live firing is being conducted, the person or persons in charge shall display a red flag from a conspicuous location along the shore to signify the range is active and post lookouts to ensure the safety of all vessels passing through the area. At night, red lights will be displayed in lieu of flags. No firing activities shall be conducted when the visibility is less that the maximum range of the weapons being used at the facility.

(3) Recreational and commercial activities may be conducted in this area anytime the range is inactive.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Weapons Station, Yorktown, or such agencies as he or she may designate.

Dated: September 10, 2013.

Approved:

**James R. Hannon,**

*Chief, Operations and Regulatory, Directorate of Civil Works.*

[FR Doc. 2013–22614 Filed 9–17–13; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 300

**[DOCKET ID ED–2012–OSERS–0020]**

**RIN 1820–AB65**

## Assistance to States for the Education of Children With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend regulations under Part B of the Individuals with Disabilities Education Act (IDEA or Act). These regulations govern the Assistance to States for the Education of Children with Disabilities program. The Secretary seeks public comment on proposed amendments to the regulation regarding local maintenance of effort to clarify existing policy and make other related changes regarding: The compliance standard; the eligibility standard; the level of effort required of a local educational agency (LEA) in the year after it fails to maintain effort under the IDEA; and the consequence for a failure to maintain local effort. The Secretary also seeks comment on whether States and LEAs or other interested parties think these proposed amendments will be helpful in increasing understanding of, and ensuring compliance with, the current local maintenance of effort requirements. Specifically, the Secretary seeks comment from States and LEAs to identify where they are experiencing the most problems in implementing the maintenance of effort requirements.

**DATES:** We must receive your comments on or before December 2, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:*

If you mail or deliver your comments about these proposed regulations, address them to Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW., room 5103, Potomac Center Plaza, Washington, DC 20202–2600.

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW., room 5103, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7605.

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:**

### Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to begin with any general comments and then to identify clearly the specific section or sections of the proposed regulations that your comments address and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the IDEA Part B program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You also may inspect the comments in person in room 5104, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**Background**

*34 CFR Part 300 (Part B)*

The regulations in 34 CFR part 300 implement Part B of the IDEA. Under Part B, the Department provides grants to States, outlying areas, and freely associated States, as well as funds to the Department of the Interior, to assist them in providing special education and related services to children with disabilities. There are four key purposes of the Part B regulations: (1) To ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) to ensure that the rights of children with disabilities and their parents are protected; (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities; and (4) to assess and ensure the effectiveness of efforts to educate children with disabilities.

Part B funding is intended to assist States and LEAs in meeting their financial obligation to provide special education and related services to eligible children with disabilities. In order to receive funds, States must apply to the Secretary, and LEAs must apply to their States. The statute and its regulations impose conditions on Part B grants, including a maintenance of State financial support provision and a maintenance of effort (MOE) provision for LEAs. This NPRM focuses only on proposed amendments to the LEA MOE provision.

*The LEA MOE Requirement*

Under section 613(a)(2)(A)(iii) of the IDEA, except as provided in section 613(a)(2)(B) and (C), Part B funds provided to an LEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of those expenditures for the preceding fiscal year. This provision is repeated in the Part B regulations in § 300.203(a).

*Standard for Determining LEA Eligibility.* The regulations expand on the statutory requirement by adding an LEA MOE standard that State educational agencies (SEAs) must apply when determining whether an LEA is eligible for Part B funds. The eligibility standard is in § 300.203(b). Under this provision, the SEA must determine whether the LEA has budgeted for the education of children with disabilities at least the same total or per capita amount of local, or State and local, funds as it spent during the most recent prior year for which there is information available. In other words, the standard for determining eligibility for funds described in § 300.203(b) generally compares the amount budgeted for the year for which the LEA is applying for Part B funds to the amount expended in the most recent prior year for which data are available.

If an LEA has been meeting the MOE standard with State and local funds and in a subsequent year will not be able to budget at least as much in State and local funds as it spent in the most recent prior year for which data are available, the LEA must budget at least as much in local funds as it spent in local funds when the LEA last met the MOE standard using local funds only. (§ 300.203(b)(2))

Using an LEA's budget as the measure of eligibility is necessary because LEAs apply for, and SEAs generally determine their eligibility for, Part B funding for the upcoming school year (SY) in the spring or early summer of the current year, well before expenditure data for that current year are available.

*Auditing and Compliance Standard.* SEAs use a different standard when determining whether an LEA complied with the requirement to maintain effort. When an SEA examines an LEA's compliance with the MOE requirement, such as in an audit or compliance review, the amount of local, or State and local, funds expended for the education of children with disabilities in a year generally determines the level of fiscal ''effort'' that an LEA must maintain in the following year. (*See* § 300.203(a).)

*Exceptions to the MOE Requirements.* Under section 613(a)(2)(B) and (C) of the IDEA, certain exceptions and adjustments to the basic MOE requirements apply. Under section 613(a)(2)(B) and its implementing regulations in § 300.204 (exceptions for local changes), an LEA may reduce its required level of expenditures because of the voluntary departure of special education personnel, a decrease in the enrollment of children with disabilities, the termination of the obligation of the agency to provide an exceptionally costly program of special education to a child with a disability, or the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Under section 613(a)(2)(C) and its implementing regulations in § 300.205 (Federal increase), an LEA may adjust its expenditures in fiscal years when the Part B, section 611 allocation received by the LEA exceeds the amount the LEA received for the previous fiscal year. In those years, under the conditions specified in section 613(a)(2)(C)(ii), (iii), and (iv), the LEA may reduce its required level of expenditures by not more than 50 percent of the amount by which the LEA's current Part B section 611 grant exceeds its Part B section 611 grant in the prior year. If, when reviewed retrospectively, and after making allowances for any of the exceptions and adjustments described in section 613(a)(2)(B) and (C), the LEA maintained or exceeded its level of local, or State and local, expenditures for the education of children with disabilities from year to year, either in total or per capita, then the LEA has met the MOE requirement.

The following chart and explanations illustrate how an LEA could meet local MOE under current §§ 300.203 through 300.205 over a period of years:

Numbers are dollars in 10,000s budgeted and expended for the education of children with disabilities

(* Denotes how the LEA met the MOE requirement, i.e., through local funds or State and local funds)

HOW AN LEA MEETS LOCAL MOE OVER A PERIOD OF YEARS

| Fiscal year (actual expenditures) | Local funds | State funds | State and local funds | Reductions in Expenditures pursuant to § 300.204 or § 300.205 |
|---|---|---|---|---|
| Covering SY 2006–2007 ..... | *110 | 190 | 300 | |
| Covering SY 2007–2008 ..... | 70 | 210 | *280 | 20 reduction permissible under § 300.204(a). |
| Covering SY 2008–2009 ..... | 40 | 230 | *270 | 10 reduction permissible under § 300.204(c). |
| Covering SY 2009–2010 ..... | 40 | 240 | *280 | |
| Covering SY 2010–2011 ..... | 60 | 220 | *280 | |
| Covering SY 2011–2012 ..... | *80 | 150 | 230 | |
| Covering SY 2012–2013 ..... | *75 | 160 | 235 | 5 reduction permissible under § 300.205. |

SY2006–2007: Assumes 110 is the amount of local funds expended in the prior year.

SY2007–2008: The LEA met MOE based on the combination of State and local funds, after a reduction of 20 permissible under § 300.204(a) based on voluntary departures of special education personnel. The LEA did not meet MOE based on local funds only.

SY2008–2009: The LEA met MOE based on the combination of State and local funds, after a reduction of 10 permissible under § 300.204(c) because the LEA was no longer responsible for a particularly costly program of special education to a child who moved out of the jurisdiction. The LEA did not meet MOE based on local funds only.

SY2009–2010: The LEA met MOE based on the combination of State and local funds. The LEA did not meet MOE based on local funds only, because the comparison is to the last year the LEA met MOE based on local funds only (06–07), less any reductions taken under §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

SY2010–2011: The LEA met MOE based on the combination of State and local funds. The LEA did not meet MOE based on local funds only, because the comparison is to the last year the LEA met MOE based on local funds only (2006–2007), less any reductions taken under §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

SY2011–2012: The LEA met MOE based on local funds only (the last year the LEA met MOE based on local funds only, 2006–2007, less reductions taken in 2007–2008 and 2008–2009 permitted under § 300.204 (exceptions for local changes)), but the LEA did not meet MOE based on the combination of State and local funds.

SY2012–2013: The LEA met MOE based on local funds only (the last year the LEA met MOE based on local funds only, 2011–2012, less a reduction permitted under § 300.205 (Federal increase)).

**Significant Proposed Regulations**

*Summary of proposed changes.* We are proposing in this NPRM to amend current § 300.203 by—

(1) Clarifying the compliance standard. We propose to—

- Revise the heading of § 300.203(a) to clarify that this section addresses the compliance standard an SEA must use when determining whether an LEA has complied with the requirement to maintain effort;
- Add language to § 300.203(a) to clarify how an LEA meets the standard in any fiscal year, based on a combination of State and local funds or local funds only; and
- Add language to § 300.203(a) to specify how an LEA meets the standard in any fiscal year based on local funds only if the LEA has not previously met the MOE compliance standard based on local funds only;

(2) Clarifying the eligibility standard. We propose to—

- Revise the heading of § 300.203(b) to clarify that this section addresses the eligibility standard an SEA must use when determining whether an LEA is eligible for Part B funds;
- Revise 300.203(b)(1) to replace the phrase ''most recent prior year'' with the phrase ''most recent fiscal year'' to conform with the remaining changes proposed in this section;
- Revise the language in § 300.203(b)(2) to clarify that if an LEA relies on local funds only to meet the eligibility standard in § 300.203(b)(1)(i), the LEA must budget at least as much in local funds for the education of children with disabilities, either in total or per capita, as the amount it spent in local funds for that purpose in the most recent fiscal year for which information is available and for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds;
- Add language to § 300.203(b) to specify that if an LEA relies on local funds only to meet the eligibility standard in § 300.203(b)(1)(i) and has not previously met the MOE compliance standard based on local funds only, the LEA must budget at least as much in local funds for the education of children with disabilities, either in total or per capita, as the amount it spent in local funds for that purpose in the most recent fiscal year for which information is available; and
- Move current § 300.203(b)(3) to § 300.203(a) and to modify the language because current § 300.203(b)(3) addresses the compliance standard, not the eligibility standard;

(3) Specifying the MOE requirements for an LEA that fails to maintain effort in a prior year. We propose to specify in § 300.203(c) that when an LEA fails to maintain its level of expenditures required by § 300.203(a), the level of expenditures required in any fiscal year beginning on or after July 1, 2014, is the amount that would have been required in the absence of that failure and not the LEA's reduced level of expenditures; and

(4) Specifying the consequences for an LEA's failure to maintain effort. We propose in § 300.203(d) the consequence for an LEA that fails to maintain its level of expenditures for the education of children with disabilities. The SEA would be liable in a recovery action under 20 U.S.C. 1234a to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures.

The economic downturn in recent years has hurt many State and local treasuries and generated a number of questions about the application of the Part B LEA MOE requirements. The Department has provided guidance to States and LEAs about the LEA MOE provisions in Part B, through multiple means such as policy letters, webinars, and conference presentations. However, the Department continues to receive questions on these complex requirements.

Through fiscal monitoring and reviewing audit findings, the Office of Special Education Programs (OSEP) has found that a significant lack of understanding regarding the local MOE requirements persists. For example, through our fiscal monitoring OSEP has determined that many SEAs have not allowed LEAs to use all four comparisons (State and local total or per capita or local only total or per capita) to demonstrate compliance with the LEA MOE requirements. This could result in an SEA making a finding of noncompliance and returning funds to the Department without giving LEAs the opportunity to demonstrate compliance using all four comparisons. Other States are not applying the exceptions in § 300.204 correctly or are not applying them at all. Finally, some States have not understood the difference between the eligibility standard and the compliance standard and may only be evaluating the eligibility standard and never determining actual LEA compliance with the LEA MOE provisions. As noted previously, the Secretary seeks comment from States and LEAs to identify where they are experiencing the most problems in implementing the maintenance of effort requirements and whether these proposed regulations will help to address those problems.

Many parties expressed concern about our June 16, 2011, response to a question from Dr. Bill East about what level of expenditures an LEA must maintain in a year following a year in which the LEA fails to maintain its required level of expenditures, and the consequence for an LEA's failure to maintain effort in the prior year.

After further review, and as indicated in our April 4, 2012, letter to Ms. Kathleen Boundy (*www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-04-*

*04-2012.pdf*), we have withdrawn our interpretation as expressed in the letter to Dr. East.

In the letter to Ms. Boundy, we noted that

> LEAs, at a minimum, should not reduce their level of financial support for the education of children with disabilities, except as permitted in section 613(a)(2)(B) and (C), so that they can continue to meet their obligations to provide the special education and related services that children with disabilities need to receive a free appropriate public education.

In order to ensure that all parties involved in implementing, monitoring, and auditing LEA compliance with MOE requirements understand the rules to apply, we are instituting this regulatory action. We are proposing to amend the regulations to clarify: (1) The compliance standard; (2) the eligibility standard; (3) the level of financial support required in a subsequent year if an LEA fails to maintain effort; and (4) the consequences for failure to maintain effort.

*Compliance standard.* The Department continues to receive questions on the compliance standard in current § 300.203(a). This section states that except as provided in §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase), funds provided to an LEA under Part B of the IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

This does not conform to the eligibility standard in § 300.203(b). The eligibility standard provides an SEA flexibility for the purpose of determining if an LEA meets the eligibility standard by allowing an LEA to budget for the education of children with disabilities at least the same total or per capita amount from either the combination of State and local funds or local funds only as the LEA spent for that purpose from the same source for the most recent prior year for which information was available. Therefore, we are proposing to clarify in § 300.203(a)(2)(i) that an SEA may determine that an LEA meets the compliance standard if the LEA does not reduce the amount of State and local funds expended for the education of children with disabilities, either in total or per capita, below the amount of State and local funds expended for that purpose in the preceding fiscal year, except as provided in §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

In addition, under the eligibility standard in current § 300.203(b)(2), if an LEA relies on local funds to establish eligibility, the fiscal year that determines the amount of local funds the LEA must budget for the education of children with disabilities is the most recent fiscal year for which information is available and in which the LEA established compliance using local funds only. We are proposing to clarify in § 300.203(a)(2)(ii) that an SEA may determine that an LEA meets the compliance standard if the LEA does not reduce the amount of local funds expended for the education of children with disabilities, either in total or per capita, below the amount of local funds expended for that purpose in the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, except as provided in §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase).

This provision is consistent with the purpose of the local MOE provision, which is to support the continuation of at least a certain level of local expenditures for the education of children with disabilities. This provision would clarify that an LEA does not meet the compliance standard if the amount of local funds expended in a fiscal year for the education of children with disabilities is the same as the amount of local funds expended for that purpose in the preceding fiscal year, if the LEA did not meet the MOE compliance standard based on local funds only in the preceding fiscal year. This ensures that if an LEA met MOE in year one based on local funds only, and decreased the amount of local funds it expended as State funding increased in year two, the LEA could not demonstrate that it met MOE based on local funds only in year three by using the preceding fiscal year (year two), the fiscal year in which it decreased the amount of local funds it expended, as the comparison year.

For example, in year one an LEA met MOE based on local funds. In year two, the LEA decreased the amount of local funds it expended, and, because State funding increased, the LEA met MOE based on State and local funds. In year three, the LEA meets MOE based on local funds only by spending the amount of local funds it expended in year one; it cannot use year two (the preceding fiscal year) as the comparison year because the amount of local funds expended that year was less than the amount of local funds expended in year one.

Thus, comparing the amount of local funds expended for the education of children with disabilities to a fiscal year in which an LEA met the compliance standard based on local funds only, rather than the preceding fiscal year, means in this situation the comparison year is the year in which the LEA expended the highest amount of local funds.

In addition, under the proposed regulations, an LEA may not use as a comparison year a year in which the LEA met the compliance standard based on local funds (and not State and local funds) and in an intervening year increased the amount of local funds expended and met the compliance standard based on local funds and State and local funds. For example, in year one an LEA met MOE based on local funds. In year two, the LEA increased the amount of local funds it expended and met MOE based on local funds, and, because State funding also increased, it also met MOE based on State and local funds. In year three, the LEA meets MOE based on local funds only by spending the amount of local funds it expended in year two; it cannot use year one as a comparison year because the amount of local funds expended in that year was less than the amount of local funds expended in year two. Thus, comparing the amount of local funds expended for the education of children with disabilities to a fiscal year in which an LEA met the compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, means in this situation the comparison year is the year in which the LEA expended the highest amount of local funds. We understand that because of fluctuations in the amount of State and local funds LEAs receive for the education of children with disabilities, there may not be an approach that would in every instance result in the comparison year being the year in which the LEA expended the highest amount of local funds. However, we believe that using the most recent fiscal year in which an LEA met the compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, is most likely to result in the comparison year being the year in which the LEA expended the highest amount of local funds.

On May 20, 2013, the Department's Office of Inspector General (OIG) issued an Alert Memorandum related to the administration of LEA MOE requirements by the California Department of Education (CDE). (See *www2.ed.gov/about/offices/list/oig/*

*auditreports/fy2013/l09n0004.pdf.*) The OIG found two instances in which CDE allowed LEAs that had not previously demonstrated compliance based on local funds only to demonstrate MOE compliance by comparing their fiscal year 2009–2010 local only expenditures to fiscal year 2006–2007 local only expenditures. We agreed with the OIG that in this situation, the LEAs should not have been permitted to demonstrate MOE compliance by comparing their fiscal year 2009–2010 local only expenditures to fiscal year 2006–2007 local only expenditures.

We recognize that the current regulations do not address the situation where an LEA has not previously demonstrated compliance based on local funds only. Both the statutory and regulatory LEA MOE provisions set out two comparison years for the purpose of LEA MOE compliance—the preceding fiscal year or, if the LEA relies on local funds only, the most recent fiscal year the LEA met the MOE compliance standard based on local funds only. Given the OIG's recommendation that the Department revise the local MOE regulation as needed and the fact that this situation is not addressed in the current regulations, we are proposing to add language to § 300.203(a)(2)(iii) to specify that the comparison year that applies when determining compliance if an LEA has not previously met MOE based on local funds only is the preceding fiscal year.

Because current § 300.203(b)(3) addresses the compliance standard and not the eligibility standard, we are also proposing to modify the language and move that section to proposed § 300.203(a), which would address the compliance standard.

*Eligibility standard.* Under current § 300.203(b)(2), an LEA that relies on local funds to establish eligibility must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

The Department has received questions that indicate the language ''the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section'' has created some confusion. Therefore, we are proposing to revise § 300.203(b)(2) to clarify that the comparison year is the most recent fiscal year for which information is available and the LEA met the MOE compliance standard using local funds only, even if the LEA also met the MOE compliance standard based on State and local funds. We are also proposing to add language to § 300.203(b)(3) to specify that the comparison year that applies when determining eligibility if an LEA has not previously met MOE based on local funds only is the most recent fiscal year for which information is available.

*Level of effort required in a subsequent year.* The Department believes that when an LEA fails to maintain its required level of expenditures, the level of expenditures required in future years should be the amount that would have been required in the absence of that failure and not the LEA's actual expenditures in the year it failed to meet the MOE requirement. This interpretation is based on careful consideration of the statutory language, structure, and purpose.

The statute is silent on the precise question of the level of effort required if an LEA fails to meet MOE in a prior year. In contrast, section 613(a)(2)(B) and (C) of the IDEA describes in detail two sets of conditions under which an LEA lawfully may reduce its expenditures. In light of the precision with which these exceptions and adjustments are spelled out, it would be anomalous for Congress to permit LEAs—through silence—to reduce the required level of expenditures. The absence of an exception in the statute for failure of an LEA to meet the local MOE requirement in the prior year strongly supports the position that such a failure does not reduce the level of effort required in future years. In light of the detail with which other exceptions are laid out in the statute, we believe that the Act's silence on the level of expenditures required in the year after an LEA has failed to comply with the LEA MOE requirement does not reflect an intent by Congress to permit LEAs to take advantage of a violation of the Act.

With regard to the State maintenance of State financial support required in section 612(a)(18) of the Act, the IDEA makes clear that, if effort is not maintained in a particular year, the financial support required in future years ''shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.'' 20 U.S.C. 1412(a)(18)(D). Although similar language pertaining to LEAs is not contained in section 613, had Congress intended the phrase ''for the preceding fiscal year'' to carry a different meaning when applied to LEAs, we believe it would have stated that intention clearly. Rather, it is likely that Congress did not feel compelled to restate in section 613 what it already had made obvious in the preceding section.

Furthermore, allowing an LEA to reduce spending on the education of children with disabilities by failing to comply with a statutory requirement is inconsistent with the purpose of the local MOE requirement, which is to support a continuation of at least a certain level of local expenditures for the education of children with disabilities. Permitting an LEA to lower its required level of effort based on a past year's failure to comply with the requirement conflicts in a fundamental way with that purpose and provides a financial incentive for LEAs not to maintain their fiscal efforts. We do not believe that the statute contemplates that an LEA should be permitted a future financial benefit from a current failure to comply with the LEA MOE requirement.

We also believe that if an LEA were permitted to reduce expenditures for the education of children with disabilities for reasons not specifically stated in the exceptions in section 613(a)(2)(B) and (C) of the Act, services for children with disabilities would likely suffer. This result would be contrary to the overall purpose of the IDEA, which is ''to ensure that all children with disabilities have available to them a free appropriate public education'' (20 U.S.C. 1401(d)).

The adjustments and exceptions that are built into the IDEA in section 613(a)(2)(B) and (C) provide sufficient protection to LEAs faced with changed circumstances, and they also help to ensure that sufficient funding will be available in the future to provide appropriate services to children with disabilities. Additionally, under § 300.203(b), an LEA is given the benefit of the most favorable of four comparisons in calculating the required maintenance of effort level. An SEA must determine that an LEA meets the MOE standard if, after taking into account the adjustments and exceptions described previously, the LEA maintained (or exceeded) its level of local, or State and local, expenditures for the education of children with disabilities from year to year, either in total or per capita.

For all of these reasons, we believe that the position expressed in the April 4, 2012, letter correctly interprets the statutory obligation of LEAs to maintain effort. Therefore, we are proposing to add a provision that if, for any fiscal year, an LEA fails to maintain effort, the level of effort required of the LEA in a subsequent fiscal year is the amount that would have been required in the

absence of that failure and not the LEA's reduced level of expenditures. We are proposing to specify that this provision would apply to any fiscal year beginning on or after July 1, 2014, the beginning of the first grant award period after the date these regulations could take effect.

Under the proposed regulations, in order to be eligible to receive a grant under IDEA Part B, LEAs will need to budget as much or more State and local funds in the upcoming fiscal year as they expended in the most recent fiscal year for which data are available. If LEAs do not meet that test, they must budget as much or more local funds in the upcoming fiscal year as they expended in the most recent fiscal year for which data are available and in which they met the MOE compliance requirement based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds.

Thus, if an LEA did not maintain effort in 2012–2013, and will meet the MOE requirement based on the combination of State and local funds in 2014–2015, the LEA must budget for 2014–2015 the amount that it should have expended in 2012–2013 rather than its actual 2012–2013 expenditures. Similarly, when determining an LEA's eligibility based on expenditures in 2013–2014, if an LEA did not maintain effort in 2013–2014 and will meet MOE in 2015–2016 based on the combination of State and local funds, the State must compare the LEA's amount budgeted for 2015–2016 to the amount the LEA should have expended in 2013–2014 rather than its actual expenditures. If an LEA will not be able to meet the MOE requirement based on State and local funds but did not maintain effort in the last year it established eligibility based on meeting MOE with local funds only, the LEA must budget for the upcoming fiscal year the amount of its expenditures for the last year that it met the MOE requirement based on local funds only. States will need to carefully review LEA applications, and compare amounts budgeted to amounts expended in prior years, to ensure that their LEAs meet the eligibility requirement.

In addition, States will need to monitor and audit their LEAs to ensure that they expended as much or more State and local funds in the next fiscal year as they did in the prior year, less any reductions permitted by §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase). For example, if an LEA failed to maintain effort in 2013–2014, the level of effort that a State must audit against when considering the combination of State and local funds for 2014–2015 is the level of effort the LEA should have met in 2013–2014, less any 2014–2015 reductions permitted by §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase). Similarly, when an SEA considers an LEA's compliance with MOE based on local funds only for 2014–2015, the level of effort required is the LEA's required level of effort in the most recent fiscal year in which the LEA met MOE based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, less any intervening reductions permitted by §§ 300.204 (exceptions for local changes) and 300.205 (Federal increase). The following charts illustrate how to identify the level of effort required of an LEA consistent with this interpretation for both eligibility determinations and auditing and compliance purposes.

ELIGIBILITY DETERMINATIONS BASED ON STATE AND LOCAL FUNDS

| Budget year (planned expenditures) | Met/did not meet MOE | Level of effort to be budgeted (either total or per capita) [1] |
|---|---|---|
| 2014–2015 Budget (Assumes most recent fiscal year for which data are available is 2012–2013). | Met MOE in 2012–2013 | 2012–2013 actual expenditures. |
| | Did not meet MOE in 2012–2013 | 2011–2012 actual expenditures less any reductions in 2012–2013 permitted under §§ 300.204 and 300.205. |
| 2015–2016 Budget (Assumes most recent fiscal year for which data are available is 2013–2014). | Met MOE in 2013–2014 | 2013–2014 actual expenditures. |
| | Did not meet MOE in 2013–2014 | 2012–2013 actual expenditures less any reductions in 2013–2014 permitted under §§ 300.204 and 300.205. |
| 2016–2017 Budget (Assumes most recent fiscal year for which data are available is 2014–2015). | Met MOE in 2014–2015 | 2014–2015 actual expenditures. |
| | Did not meet MOE in 2014–2015 | Level of effort required to meet MOE in 2014–2015.[2] |

[1] The required level of effort for budgeting purposes does not include any reductions that could be taken in the budget year under §§ 300.204 and 300.205.

[2] As determined under proposed §§300.203(b) and current 300.205.

AUDITING AND COMPLIANCE ANALYSIS BASED ON STATE AND LOCAL FUNDS

| Fiscal year (actual expenditures) | Met/Did not meet MOE | Required level of effort (either total or per capita) |
|---|---|---|
| Covering school year 2013–2014 | N/A | 2012–2013 actual expenditures less any reductions in 2013–2014 permitted under §§ 300.204 and 300.205. |
| Covering school year 2014–2015 | Met MOE in 2013–2014 | 2013–2014 actual expenditures less any reductions in 2014–2015 permitted under §§ 300.204 and 300.205. |
| | Did not meet MOE in 2013–2014 | Level of effort required to meet MOE in 2013–2014, less any reductions in 2014–2015 permitted under §§ 300.204 and 300.205. |
| Covering school year 2015–2016 | Met MOE in 2014–2015 | 2014–2015 actual expenditures less any reductions in 2015–2016 permitted under §§ 300.204 and 300.205. |
| | Did not meet MOE in 2014–2015 | Level of effort required to meet MOE in 2014–2015 less any reductions in 2015–2016 permitted under §§ 300.204 and 300.205. |

ELIGIBILITY DETERMINATIONS BASED ON LOCAL FUNDS ONLY

| Budget year (planned expenditures) | Met/did not meet MOE | Level of effort to be budgeted [3] (either total or per capita) |
|---|---|---|
| 2014–2015 Budget (Assumes most recent fiscal year for which data are available and LEA eligibility was established based on meeting MOE with local funds only is 2012–2013). | Met MOE in 2012–2013 | 2012–2013 actual expenditures. |
| | Did not meet MOE in 2012–2013 | Actual expenditures from the last year the LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205. |
| 2015–2016 Budget (Assumes most recent fiscal year for which data are available and LEA eligibility was established based on meeting MOE with local funds only is 2013–2014). | Met MOE in 2013–2014 | 2013–2014 actual expenditures. |
| | Did not meet MOE in 2013–2014 | Actual expenditures from the last year LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205. |
| 2016–2017 Budget (Assumes most recent fiscal year for which data are available and LEA eligibility was established based on meeting MOE with local funds only is 2014–2015). | Met MOE in 2014–2015 | 2014–2015 actual expenditures. |
| | Did not meet MOE in 2014–2015 | Level of effort required to meet MOE in 2014–2015.[4] |

[3] The required level of effort for budgeting purposes does not include any reductions that could be taken in the budget year under §§300.204 and 300.205.

[4] As determined under proposed §300.203(b) and current §§300.204 and 300.205.

AUDITING AND COMPLIANCE ANALYSIS BASED ON LOCAL FUNDS ONLY

| Fiscal year (actual expenditures) | Met/Did not meet MOE | Required level of effort (either total or per capita) |
|---|---|---|
| 2013–2014 | N/A | Actual expenditures from the last year LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205. |
| 2014–2015 | Met MOE based on local funds only in 2013–2014. | Actual expenditures from 2013–2014 less any reductions in intervening years permitted under §§ 300.204 and 300.205. |
| | Did not meet MOE based on local funds only in 2013–2014. | Level of effort required to meet MOE in the last year the LEA met MOE with local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205. |
| 2015–2016 | Met MOE based on local funds only in 2014–2015. | Actual expenditures from 2014–2015 less any reductions in intervening years permitted under §§ 300.204 and 300.205. |
| | Did not meet MOE based on local funds only in 2014–2015. | Level of effort required to meet MOE in the last year that LEA met MOE based on local funds only, even if the LEA also met MOE based on State and local funds, less any reductions in intervening years permitted under §§ 300.204 and 300.205. |

*Consequences for Failure to Maintain Effort.* We also are proposing to add a provision regarding the consequence if an LEA fails to maintain its level of expenditures for the education of children with disabilities. The provision would specify, consistent with long-standing Department practice, that the SEA is liable in a recovery action under 20 U.S.C. 1234a to pay the Department, from non-Federal funds or funds for which accountability to the Federal government is not required, the difference between the amount of local, or State and local, funds the LEA should have expended and the amount that it did expend. 20 U.S.C. 1234a describes the method the Department uses to recover misused funds.

Under 20 U.S.C. 1234b(a), if a recipient of Department funds is determined to have made an unallowable expenditure or to have otherwise failed to discharge its responsibility to account properly for funds, the recipient is required to return an amount that is proportionate to the harm to the Federal interest. The addition of this provision to current § 300.203 will not change the law in this area. However, it is important to add this provision to the regulations in order to highlight the importance of the LEA MOE requirement and the significance of the remedies for a failure to comply. This addition should increase focus on, and, through heightened attention and monitoring by States, compliance with the LEA MOE requirement.

Although not necessary to address in the regulation, it is worthwhile to point out that if an SEA is required to pay the Department based on an LEA's failure to comply with the LEA MOE requirement, the SEA may then seek to recoup from the LEA, from non-Federal funds or funds for which accountability to the Federal Government is not required, the amount by which the LEA did not maintain effort. Whether the SEA seeks recovery of those funds from the LEA is a matter of State discretion.

**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.

The proposed amendment is a significant regulatory action subject to review by OMB under section 3(f)(4) 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 upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

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

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make informed 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 proposed regulations only upon a reasoned determination that their benefits would 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 would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

*Potential Costs and Benefits*

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. In conducting this analysis, the Department examined the extent to which the changes made by these proposed regulations would add to or reduce the costs to States, LEAs, and others, as compared to the costs of implementing the current Part B program regulations. Based on the following analysis, the Secretary has concluded that the proposed changes could result in reduced costs for States and LEAs to the extent that increased understanding of LEA MOE requirements and use of all four tests to demonstrate LEAs met MOE would result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs. However, there is also potential for additional costs for States, and potentially LEAs to the extent LEAs are required to increase expenditures in the year following a failure to meet the LEA MOE provisions under Part B of the Act or in the event that a State or LEA incorrectly calculated MOE in a previous year due to confusion. The Secretary believes that the benefits of ensuring that adequate resources are available to provide FAPE for children with disabilities are likely to outweigh any costs to LEAs that violated the local MOE requirements in the previous year and do not plan to restore funding in the subsequent year to the level they should have maintained in the prior year.

Section 300.203

The effect of the proposed changes on LEAs would depend on: (1) The degree of misunderstanding on the part of States and LEAs about the eligibility and compliance standards and the flexibility that the LEAs have in meeting one of four tests; and (2) the likelihood that LEAs would violate the MOE requirement in one or more years and seek to maintain funding at the reduced level in subsequent years. One possible source of information that could be used to estimate the effect of the proposed changes on LEAs would be data on previous findings of LEA violations. However, the Department has limited information on LEA violations. States are responsible for monitoring LEA compliance with MOE requirements and resolving any audit findings in this area, but States are not required to report the number of LEAs that violated MOE requirements, the basis of the violations, or the amount of funding involved.

Other sources of information on the likely effects of the proposed changes are audit reports and OSEP's fiscal monitoring of States regarding the implementation of the current regulations.

OSEP's fiscal monitoring, in conjunction with OIG's audit findings and reports, have identified a number of problems with State administration of the LEA MOE requirements under the current regulations, suggesting that there is confusion about the MOE requirements and a lack of clarity in the existing regulations. Specifically, OSEP has found that at least 40 percent of States have policies and procedures that are not consistent with how States should determine eligibility or compliance in relation to the LEA MOE requirements. Most notably, it appears that some States have not allowed LEAs to use all four tests to demonstrate that they have met the MOE requirements for purposes of eligibility or compliance determinations, including the test that allows the LEA to demonstrate it met the MOE requirement on the basis of only local funds. There is also some indication that States may have used an inappropriate comparison year when States have allowed LEAs to make a local-to-local comparison.

In years when States did not allow the LEAs to use all four tests to demonstrate they met MOE, it is possible that LEAs budgeted for, and expended, more than they would have if both States and LEAs had understood they had flexibility to use all four tests. In these instances, the clarification made in the proposed regulations could result in a reduction in future expenditures on the part of LEAs. Additionally, in instances in which States did not appropriately allow the LEAs to use all four tests in meeting MOE, the State may have sought to recover funds from LEAs or made unnecessary repayments to the Department. Clarifying that all four tests may be used for MOE determinations could result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs.

Alternatively, in those cases in which States may be allowing LEAs to use an incorrect comparison year in implementing the test for local-only funds, the change in the regulations that clarifies the comparison year may result in increased expenditures for LEAs. For example, in its May 20, 2013 Alert Memorandum, the OIG raised concerns about the comparison years used by the State of California in determining LEA MOE compliance. According to that memorandum, the State used an incorrect comparison year when determining that two LEAs met MOE requirements using the local-only test. Specifically, California allowed the LEAs that had never relied on local funds only to meet the MOE requirement to use a comparison year from three years earlier, instead of requiring a comparison of local-only expenditures to the previous fiscal year. In this case, the clarification made by the proposed regulations would require increased LEA expenditures. We do not know the extent to which the use by States and LEAs of incorrect comparison years has permitted lower expenditures than would be required under the proposed changes, or, alternatively, the extent to which using the incorrect comparison year has resulted in higher expenditures than would be required under the proposed regulations. However, in general, the findings in fiscal monitoring demonstrating that States are providing less flexibility to LEAs than is allowable under the law suggest that the clarifications included

in these proposed regulations could reduce costs for both LEAs and States.

The regulations also specifically address the level of expenditures required by an LEA in the years following a year in which an LEA violated the MOE requirements. Specifically, the proposed regulations clarify that, in a year following a year in which the LEA failed to meet MOE, the required level of expenditures is the level of expenditures in the last year in which the LEA met the MOE requirements, not the reduced level of expenditures in the preceding year.

We believe that this clarification in the regulations will improve State administration of the program, is consistent with the intent of the IDEA, and is in the best interest of children with disabilities. We do not expect the change to have a significant impact on LEA expenditures in the near term because of what we know about the extent of LEA violations and the likelihood of future violations. However, the change would eliminate the risk we have under the current regulations that State policy would permit LEAs that reduce spending in violation of the MOE requirements to maintain the reduced level of expenditures in subsequent years.

The Department typically learns of an LEA violation in conjunction with its review of audit findings. In the relatively few instances in which the Department has issued program determination letters to States concerning audit findings about LEA failure to maintain the appropriate level of effort, most of the findings concerned the absence of an effective State system for monitoring LEA MOE, rather than identifying MOE violations. Since 2004, the only program determination letter that identified specific questioned costs for LEA failure to meet MOE involved Oklahoma. In December 2006, the Department issued a program determination letter to the Oklahoma SEA seeking recovery of $583,943.29 expended under Part B of the IDEA due to audit findings that 76 LEAs had not met their required level of effort for the receipt of Federal fiscal Year (FFY) 2003 funds. In SY 2009–2010, Oklahoma reported having 532 LEAs; accordingly, 76 LEAs represented 14 percent of the State's LEAs affected by these audit findings. After reviewing additional materials provided by the State that supported the application of the MOE exceptions in § 300.204 (exceptions for local changes), the Department reduced the amount of its determination to $289,501.76. The final claim against Oklahoma was settled at $217,126.32.

We also searched the Federal Audit Clearinghouse for information about single audits of Federal awards conducted by States or private accounting firms of LEAs that expend $500,000 or more in a year in Federal award funds as required by the Office of Management and Budget's (OMB) Circular A–133. The Federal Audit Clearinghouse is located at the following link: *www.census.gov/econ/overview/go1400.html.* We searched for audit findings in response to area ''G'' of the compliance supplement to OMB Circular A–133, which relates to ''Matching, Level of Effort, and Earmarking,'' for audits related to Code of Federal Domestic Assistance 84.027 (funds awarded under section 611 of the IDEA). Single audits of Federal awards are not available for all LEAs through the Federal Audit Clearinghouse, but there is information on single audits for 9,024 LEAs for FY 2009, which represents approximately 60 percent of LEAs.

Our search identified 25 audits that contained findings related to section G of the compliance supplement, four of which were accompanied by audit reports that included questioned costs related to failure to achieve the required MOE. Only two of the four audits specified amounts of questioned costs, for $10,428 and $153,621.53, respectively. Although one cannot assume that these findings represent all violations of the LEA MOE requirement, both the small number and size of questioned costs related to failure to meet this requirement suggest that LEA MOE violations are not extensive. Audit findings for fiscal years 2007, 2008, 2010, and 2011 (to the extent available) were generally consistent with the findings for 2009.

Another source of information for estimating the likelihood of future MOE violations are data on the extent to which LEAs have reduced expenditures pursuant to the new flexibility provided in the 2004 amendments to the IDEA. Under section 613(a)(2)(C), for any fiscal year in which an LEA receives an allocation under section 611(f) that exceeds its allocation for the previous fiscal year, an LEA may reduce the level of expenditures otherwise required to meet the MOE requirement by not more than 50 percent of the amount of the increased allocation. Since May 2011, States have been reporting the amount each LEA received in an IDEA subgrant under section 611 or section 619, whether the State had determined that the LEA or educational service agency (ESA) had met the requirements of Part B of IDEA, and whether each LEA or ESA had reduced its expenditures pursuant to § 300.205.[5]

The data we have collected to date include reductions taken in the year in which LEAs were most likely to make reductions because of the availability of an additional $11.3 billion for formula grant awards under the Grants to States program provided under the American Recovery and Reinvestment Act of 2009 (ARRA). Since these additional funds increased the annual allocation to most LEAs in FFY 2009 relative to FFY 2008, LEAs meeting conditions established by the State and the Department were permitted to reduce the level of support they would otherwise be required to provide during SY 2009–2010 by up to 50 percent of the amount of the increase.

Of the 14,936 LEAs that received allocations under section 611 in FFY 2008 and FFY 2009, States reported that 12,061 received increased allocations under section 611 and met other conditions such that they were eligible to reduce their level of effort. Notably, only 4,237 LEAs (or 36 percent) reported that they reduced their level of effort. If they met the conditions, LEAs were permitted to reduce effort by up to 50 percent of the increase in their allocation, but they typically reduced spending only by 38 percent.

Larger LEAs were more likely to reduce expenditures than LEAs in general. For the 100 largest LEAs, based on their FFY 2008 allocations under section 611, 31 of the 51 LEAs that were eligible to reduce expenditures actually did so and these LEAs reduced expenditures by an average of 73 percent of the allowable amount.

Of the 4,237 LEAs overall that reported reducing expenditures, only 32 had been determined to have not met the requirements of Part B of the IDEA and may have violated the MOE requirements, unless one of the exceptions to the MOE requirements in § 300.204 (exceptions for local changes) were applicable. The combined amount of MOE reductions for these LEAs was $19,304,506, with a median reduction of $745. One of these LEAs reported a reduction of $18,358,631, which represents 41 percent of the increase in that LEA's allocation from the previous year; but the reductions that were taken by the remaining LEAs were relatively small.

The combined amount by which eligible LEAs in the 50 States, Washington, DC, and Puerto Rico could have reduced their level of effort in SY

[5] Data are available online at *www.ideadata.org/PartBMaintenance_asp* (Table 8 LEA-level files, revised 2/29/12, Accessed 5/15/12).

2009–2010 was $5.6 billion, but the combined amount of actual reduction was only 27 percent of that amount or $1.5 billion. Because most LEAs did not reduce expenditures when they had a legitimate opportunity to do so and thereby reduce the level of effort required in future years, it is reasonable to assume that a smaller number of LEAs would undertake reductions that constitute violations of the MOE requirements. We believe it is highly unlikely that the 4,205 LEAs that met the requirements of section 613(a)(2)(C) of the Act and reduced their level of effort would seek further reductions that would violate the MOE requirements since they legitimately lowered their own required level of effort when they made those previous reductions.

Based on available audit findings and data, the Department believes that LEAs generally are unlikely to reduce expenditures in violation of the MOE requirements. Moreover, we believe that the requirement that LEAs provide FAPE for all eligible children with disabilities provides another critical protection against unwarranted reductions of expenditures to support special education and related services for children with disabilities. However, to ensure that State policy and administration of the MOE requirements is consistent with the Department's position on the required level of future expenditures in cases of LEA violations, we think it is critical to change the regulations, as we have proposed, to clearly articulate the Department's interpretation of the law in this regard.

*Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 300.203 Maintenance of effort.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand see the instructions in the **ADDRESSES** section.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. These proposed regulations would affect all local educational agencies, including the estimated 12,358 LEAs that meet the definition of small entities. However, we have determined that the proposed regulations would not have a significant economic impact on these small entities. This regulatory action would have the effect of increasing costs for small LEAs that have either violated the local MOE requirements and are not seeking to restore funding in the subsequent year to the level they should have maintained in the prior year or incorrectly calculated MOE in a previous year due to confusion. However, this regulation could also potentially decrease the costs for small LEAs to the extent that increased understanding of LEA MOE requirements and use of all four tests to demonstrate LEAs met MOE would result in States making fewer repayments to the Department and seeking fewer recoveries from LEAs. Based on the limited information available, the Secretary does not believe that the effect would be significant. We do not have any evidence that LEAs generally are likely to violate the MOE requirements and we have no reason to believe that small LEAs are more likely to violate the local MOE requirements than larger LEAs. There are no increased costs associated with this regulatory action for LEAs that do not violate the MOE requirement.

*Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), we have assessed the potential information collections in these proposed regulations that would be subject to review by OMB (Report on IDEA Part B Maintenance of Effort Reduction (§ 300.205(a)) and Coordinated Early Intervening Services (§ 300.226)) (Information Collection 1820–0689). In conducting this analysis, the Department examined the extent to which the amended regulations would add information collection requirements for public agencies. Based on this analysis, the Secretary has concluded that these amendments to the Part B regulations would not impose additional information collection requirements.

*Intergovernmental Review*

This program is subject to 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 the Department's specific plans and actions for this program.

*Assessment of Educational Impact*

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would 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 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.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

**List of Subjects in 34 CFR Part 300**

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: September 13, 2013.

**Arne Duncan,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR part 300 as follows:

## PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

■ 2. Section 300.203 is revised to read as follows:

**§ 300.203 Maintenance of effort.**

(a) *Compliance standard.* (1) Except as provided in §§ 300.204 and 300.205, funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(2) An LEA meets this standard if it does not—

(i) Reduce the level of expenditures for the education of children with disabilities made by the LEA from State and local funds, either in total or per capita, below the level of those expenditures for the preceding fiscal year, except as provided in §§ 300.204 and 300.205;

(ii) Reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, either in total or per capita, below the level of those expenditures for the most recent fiscal year for which the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds, except as provided in §§ 300.204 and 300.205; or

(iii) Reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds, either in total or per capita, below the level of those expenditures for the preceding fiscal year if the LEA has not previously met the MOE compliance standard based on local funds only, except as provided in §§ 300.204 and 300.205.

(3) Expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA may not be considered in determining whether an LEA meets the standard in this paragraph.

(b) *Eligibility standard.* (1) Except as provided in paragraph (b)(2) of this section, the SEA must determine that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the LEA met the MOE compliance standard based on local funds only, even if the LEA also met the MOE compliance standard based on State and local funds.

(3) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year and has not previously met the MOE compliance standard based on local funds only must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent from local funds for that purpose in the most recent fiscal year for which information is available.

(c) *Subsequent years.* If, for any fiscal year, an LEA fails to meet the requirement of paragraph (a) of this section, the level of expenditures required of the LEA for any fiscal year beginning on or after July 1, 2014 under paragraphs (a) and (b) of this section is the amount that would have been required in the absence of that failure and not the LEA's reduced level of expenditures.

(d) *Consequence of failure to maintain effort.* If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with paragraph (a) of this section, the SEA is liable in a recovery action under 20 U.S.C. 1234a to return to the Department, using non-Federal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1413(a)(2)(A))

[FR Doc. 2013–22668 Filed 9–17–13; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2013–0511; FRL–9901–00–Region 7]**

## Approval and Promulgation of Implementation Plans; State of Missouri; Conformity of General Federal Actions to State Implementation Plans

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri on August 12, 2011. This revision proposes to update the state general conformity rule in its entirety to bring it into compliance with the Federal general conformity rule which was updated in the **Federal Register** on April 5, 2010. General conformity regulations prohibit Federal agencies from taking actions that may cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS). This rule applies to non-attainment and maintenance areas of the state. The revision to Missouri's rule does not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments on this proposed action must be received in writing by October 18, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2013–0511, by mail to Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Amy Bhesania at (913) 551–7147, or by email at *bhesania.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 16, 2013.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2013–22617 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 26

**[Docket No. OST–2012–0147]**

**RIN 2105–AE08**

## Disadvantaged Business Enterprise: Program Implementation Modifications

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM); Notice of Reopening Comment Period and Public Listening Session.

**SUMMARY:** On September 6, 2012, the Department of Transportation (DOT) issued a notice of proposed rulemaking (NPRM) concerning various modifications to the Department's Disadvantaged Business Enterprise (DBE) Program. In a later notice published on October 25, 2012, the Department extended the public comment period until December 24, 2012. Various commenters to the NPRM expressed interest in the Department holding a public meeting on the proposed changes prior to issuing a final rule. The Department agrees. The Department will hold a public listening session on the changes proposed in the NPRM on October 9, 2013, from 12:00 p.m. EDT to 4:00 p.m. EDT in the Department's Washington, DC headquarters. The Department is simultaneously reopening the comment period from September 18, 2013 to October 30, 2013. Interested persons from both the public and private sectors are invited to offer their views orally or in writing on specific aspects of the NPRM noted below.

**DATES:** A public listening session will be held on October 9, 2013, in Washington, DC, which will commence at 12:00 noon EDT and end no later than 4:00 p.m. EDT. The comment period for the NPRM is extended to October 30, 2013.

**ADDRESSES:** (1) Public Listening Session: The public listening session will be held at DOT's Washington, DC Headquarters at 1200 New Jersey Avenue SE., Washington, DC 20590, in the Oklahoma City conference room located on the ground floor of the West Building. (2) Attendance: Due to security and seating limitations, any person wishing to attend the listening session should register at least five business days before the date of the session (October 2, 2013) by going to the OSDBU Web site at *www.dot.gov/osdbu.* Seating is on a first-come first-served basis and space is limited. For information on facilities or services for persons with disabilities or to request special assistance at the meeting, please contact Marilyn Hearns in DOT's Office of General Counsel by telephone (202–366–9154) or by email (*Marilyn.Hearns@dot.gov*) as soon as possible. (3) Teleconference: Please contact Marilyn Hearns if you wish to participate in this public listening session via teleconference line.

**FOR FURTHER INFORMATION CONTACT:** Jo Anne Robinson, Office of General Law, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–6984, *JoAnne.Robinson@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On September 6, 2012, the Department published a notice of proposed rulemaking (NPRM) entitled, ''Disadvantaged Business Enterprise: Program Implementation Modifications,'' at 77 FR 54952, that proposed various changes to the Department's DBE program, including: revisions to personal net worth, application, and reporting forms; modifications to various certification-related provisions of the rule; and revisions to several other provisions of the rule, concerning such subjects as good faith efforts, transit vehicle manufacturers and goal setting. The Department then published a notice on October 25, 2012, at 77 FR 651164, that corrected minor errors in the NPRM related to the Paperwork Reduction Act and extended the public comment period until December 24, 2012. Several commenters suggested that the Department hold a public meeting or listening session on the proposed changes before issuing a final rule. After reviewing the comments, the Department agrees that a public listening session would be helpful to all relevant stakeholders as well as interested members of the public and has scheduled a public listening session for October 9, 2013.

### Listening Session

The listening session will provide an opportunity for interested parties to articulate the issues and concerns they have with certain aspects of the NPRM. In particular, the Department is interested in hearing from the public on the following:

1. What are the specific, quantifiable costs and benefits associated with completing or reviewing the proposed forms (Personal Net Worth, Certification Application, Uniform Report on Awards/Commitments; DBE Payment Data) from the perspective of a certifying entity, an applicant firm, or a recipient (where applicable);

2. What are the specific, quantifiable costs and benefits associated with requiring certified DBEs to submit additional documents with the annual no change affidavit from the perspective of a certifying entity and a certified DBE;

3. What are the specific, quantifiable costs and benefits associated with requiring good faith efforts documentation when bids are due and requiring additional documents (i.e., DBE and non-DBE quotes, DBE subcontracts) from the perspective of a prime contractor, a DBE, and the recipient letting the contract.

Any person wishing to participate in the listening session should notify DOT by telephone or by email, at the addresses provided in the Attendance section of this notice at least five business days prior to the date of the listening session (October 2, 2013). The notification should identify the party the person represents, and the particular subject(s) described above the person plans to address. The notification should also provide the participant's contact information. Please put ''NPRM Listening Session'' in the subject line of the email notification.

At the listening session, a DOT representative will make an opening statement outlining the procedures for the session. Speakers' remarks will be limited to 5 minutes each, although the Department may need to limit the duration of presentations, if necessary, to provide all participants the opportunity to speak. If sufficient time exists after all initial statements by those wishing to speak have been completed, the Department may allow those persons wishing to make a brief rebuttal to do so in the same order in which the initial statements were made. If necessary, the Department may provide additional instructions and modify speaking limits at the time of the listening session. A transcript of the discussions will be made a part of the public docket in this rulemaking.

**Extension of Comment Period**

To accommodate the public listening session and to provide interested parties the opportunity to submit comments in response to views or information provided at the public listening session, the Department is reopening the comment period for this rulemaking from September 18, 2013 to October 30, 2013. You may submit comments (identified by the agency name and DOT Docket ID Number OST–2012–0147) by any of the following methods:

• *Federal Rulemaking Portal:* Go to *www.regulations.gov* and 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. Materials may also be submitted directly to DOT staff at the public listening session.

• *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.

• *Fax:* 202–493–2251.

Issued this 9th day of September, 2013 at Washington, DC, under authority delegated in 49 CFR 1.27.

**Kathryn B. Thomson,**

*Acting General Counsel.*

[FR Doc. 2013–22708 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**RIN 0648–BD05**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 27

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) has submitted Amendment 27 (Amendment 27) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 27 would extend the South Atlantic Council's jurisdiction for management of Nassau grouper into the Gulf of Mexico (Gulf) exclusive economic zone (EEZ); increase the number of allowable crew members to four on dual-permitted snapper-grouper vessels (*i.e.,* vessels holding a South Atlantic Charter Vessel/Headboat Permit for Snapper-Grouper and a commercial South Atlantic Unlimited or a 225-Pound Trip Limit Snapper-Grouper Permit) that are fishing commercially; remove the prohibition on retaining any fish under the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit by captain and crew of federally-permitted for-hire vessels; modify the snapper-grouper framework procedures to allow acceptable biological catch levels (ABCs), annual catch limits (ACLs), and annual catch targets (ACTs) to be adjusted via an abbreviated framework process; and remove blue runner from the FMP.

**DATES:** Written comments must be received on or before November 18, 2013.

**ADDRESSES:** You may submit comments on the amendment identified by ''NOAA-NMFS–2013–0085'' by any of the following methods:

• *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0085,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 27 may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.* Amendment 27 includes a Regulatory Impact Review and a Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727–824–5305, or email: *Kate.Michie@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register**

notifying the public that the plan or amendment is available for review and comment.

**Actions Contained in Amendment 27**

*Extension of Management Authority for Nassau Grouper to the South Atlantic Council*

Amendment 27 includes an action to extend the South Atlantic Council's jurisdiction for management of Nassau grouper into the Gulf. On December 16, 2011, NMFS published a notice of agency action (76 FR 78245) designating the South Atlantic Council as the responsible Council to manage Nassau grouper in the Gulf, pursuant to requests by the South Atlantic and Gulf Fishery Management Councils. Therefore, through Amendment 27, the South Atlantic Council would assume management responsibility for Nassau grouper in Federal waters of the Gulf. The current restrictions on the harvest or possession of Nassau grouper in the Gulf EEZ and South Atlantic EEZ would continue if Amendment 27 is approved for implementation.

*Increase in Crew Member Limit for Dual-Permitted Vessels*

Currently, there is a crew size limit of three for vessels with both a South Atlantic Charter Vessel/Headboat Permit for Snapper-Grouper and a South Atlantic Unlimited or 225-Pound Permit for Snapper-Grouper (referred to as ''dual-permitted'' vessels) that are fishing commercially. For commercial spearfishing operations, this crew size limit prevents fishermen from diving in pairs using the buddy system while having a standby diver and captain at the surface as recommended by the U.S. Coast Guard diving operations manual. Therefore, Amendment 27 would increase the crew size from three to four, which would allow two persons to remain on the vessel while there are two divers in the water.

*Removal of Captain and Crew Bag Limit Retention Restrictions for Snapper-Grouper Species*

Amendment 16 to the FMP (Amendment 16) prohibited the captain and crew of vessels operating as a charter vessel or headboat (*i.e.,* vessels with a valid South Atlantic Charter Vessel/Headboat Permit for Snapper-Grouper) from retaining gag, black grouper, red grouper, scamp, red hind, rock hind, coney, graysby, yellowfin grouper, yellowmouth grouper, yellowedge grouper, snowy grouper, misty grouper, vermilion snapper, sand tilefish, blueline tilefish, and golden tilefish to help end overfishing of gag and vermilion snapper. Subsequent to the implementation of Amendment 16, ACLs and AMs for all of these species have been established to end and/or prevent overfishing from occurring.

Analysis contained in Amendment 27 indicates allowing captain and crew to retain bag limit quantities of the species listed above would not negatively impact snapper-grouper stocks, including vermilion snapper and gag. Therefore, Amendment 27 would remove the current restriction for captain and crew on a vessel operating as a charter vessel or headboat to retain the bag limits of these snapper-grouper species.

*Modify the Framework Procedures in the FMP*

Currently, the Framework Procedures in the FMP allow ABCs, ACLs, and ACTs to be modified for snapper-grouper species via the regulatory amendment process, which can be lengthy. The lag time between when new scientific information becomes available and when catch levels can be adjusted has the potential to result in adverse impacts on the economic and biological environments of the snapper-grouper fishery. Therefore, Amendment 27 would allow ABCs, ACLs, and ACTs, to be modified using an abbreviated framework procedure, whereby after the South Atlantic Council has taken final action to change an ABC, ACL, or ACT, the Council would submit a letter with supporting data and information to the NMFS Southeast Regional Administrator (RA) requesting the desired changes to those applicable harvest parameters.

The RA would determine whether or not the requested modification may be warranted. If the modification may be warranted, NMFS would develop the appropriate documentation and analysis to comply with the National Environmental Policy Act and other applicable laws and propose the action through rulemaking. NMFS anticipates this expedited process will shorten the time it would take to make routine changes to harvest limits in response to new information.

*Remove Blue Runner From the FMP*

Blue runner was originally included in the FMP because it was thought to co-occur with other, more economically desirable species. Amendment 27 reevaluated the need for Federal management of blue runner based on updated information. The majority (99 percent) of commercial and recreational blue runner harvest occurs off the state of Florida (in Federal and state waters combined), with 76 percent of blue runner landings harvested in state waters (using landings data from 2005–2011) and a large portion of the recreational landings harvested from shore. Florida manages blue runner in state waters and blue runner is primarily used as bait, is not commonly retained for human consumption, and is exempt from any Federal bag and possession limit restrictions.

Based on this new information, the South Atlantic Council determined blue runner could be removed from the FMP without jeopardizing the health or sustainability of the stock. Therefore, Amendment 27, if approved, would remove blue runner from the FMP.

The Council has submitted Amendment 27 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 27 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and consistent with the Magnuson-Stevens Act and other applicable law, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 27.

**Proposed Rule for Amendment 27**

A proposed rule that would implement Amendment 27 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

**Consideration of Public Comments**

Comments received by November 18, 2013, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 13, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–22730 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**RIN 0648–BD21**

## Fisheries of the Caribbean, Gulf of Mexico and South Atlantic; Revisions to Headboat Reporting Requirements for Species Managed by the South Atlantic Fishery Management Council

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (South Atlantic Council) approved the Joint South Atlantic/Gulf of Mexico Generic Charter/Headboat Reporting in the South Atlantic Amendment (For-Hire Reporting Amendment) during its March 2013 meeting, and the Gulf of Mexico Fishery Management Council (Gulf Council) approved the amendment at its February 2013 meeting. The Councils submitted the amendment to NMFS for agency review under procedures of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The For-Hire Reporting Amendment includes Amendment 31 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region; Amendment 6 to the FMP for the Dolphin and Wahoo Fishery of the Atlantic; and Amendment 22 to the FMP for the Coastal Migratory Pelagic Resources in the Atlantic and the Gulf of Mexico. If approved, the For-Hire Reporting Amendment would amend the FMPs to modify data reporting for for-hire vessels in the South Atlantic. Under the preferred alternative, headboat vessels in the South Atlantic would be required to submit electronic fishing records to the NMFS' Southeast Fisheries Science Center (SEFSC) Science and Research Director (SRD) weekly, or at intervals shorter than a week if notified by the SRD.

**DATES:** Written comments must be received on or before November 18, 2013.

**ADDRESSES:** You may submit comments, identified by ''NOAA–NMFS–2013–0080'', by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0080,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Mail: Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the For-Hire Reporting Amendment may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.* The For-Hire Reporting Amendment includes a draft environmental assessment, a Regulatory Flexibility Act analysis, a Regulatory Impact Review, and a Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, telephone: 727–824–5305; email: *Karla.Gore@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

**Background**

At its September 2012 meeting, the South Atlantic Council expressed concern on the inability to receive estimates of headboat catches in a timely manner. Delays in receiving and processing headboat data could contribute to the recreational annual catch limit (ACL) being exceeded. The South Atlantic Council concluded that improving data reporting could reduce the chance that the recreational ACLs are exceeded and accountability measures are triggered.

The preferred alternative in this amendment, which would require headboats in the South Atlantic to report through electronic means on a weekly basis, would improve NMFS' ability to produce in-season harvest estimates for all species in the subject FMPs.

The South Atlantic Council has submitted the For-Hire Reporting Amendment to NMFS for agency review under procedures of the Magnuson-Stevens Act. The South Atlantic Council approved the amendment during its March 2013 meeting. The Gulf Council approved the amendment at its February 2013 meeting. Gulf Council approval was necessary because the South Atlantic and Gulf Councils jointly manage the Coastal Migratory Pelagics species under the Coastal Migratory Pelagics FMP.

**Management Measures Contained in This Amendment**

This amendment would require electronic reporting for headboat vessels in the South Atlantic snapper-grouper, Atlantic dolphin and wahoo, and South Atlantic coastal migratory pelagic fisheries, increase the reporting frequency for those headboat vessels, and prohibit those headboats from continuing to fish if they are delinquent in submitting their reports.

*Mandatory Electronic Reporting for Headboat Vessels*

Currently, headboats selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips, as specified by the SRD, and on forms provided by the SRD. Until January 1, 2013, the SRD provided federally-permitted headboats with paper forms to submit their logbook data. However, as of January 1, 2013, the SRD has requested that federally-permitted headboats in the South Atlantic report electronically. The For-Hire Reporting Amendment would explicitly require that headboat vessels submit fishing records through an electronic reporting system developed

by the SEFSC. Electronic reports would be required to be submitted for trips completed, and no fishing reports would be required when no trips are taken. The For-Hire Reporting Amendment allows for paper reporting to be used in catastrophic conditions (when electronic means to report data are not feasible) as deemed by the Regional Administrator.

*Increase Reporting Frequency for the Headboat Sector*

Currently, headboat reporting forms are due on a monthly basis, and must either be made available to a fisheries statistics reporting agent or be postmarked no later than 7 days after the end of each month and sent to the SRD. The For-Hire Reporting Amendment would modify the frequency to weekly reporting or intervals shorter than a week if notified by the SRD. If no fishing activity occurred during a week, an electronic report so stating must be submitted for that week.

*Non-Compliance With Reporting Requirement*

Headboats are expected to remain current with reporting to remain in compliance with the conditions of a valid permit (i.e., to be authorized to conduct trips). Headboat owners and operators who are delinquent in submitting their reports would be prohibited from continuing to harvest and possess South Atlantic snapper-grouper, Atlantic dolphin and wahoo, and South Atlantic coastal migratory pelagic fish until they have submitted all required reports. This provision would aid in enforcement efforts to ensure electronic reports are submitted in a timely manner.

A proposed rule that would implement measures outlined in the For-Hire Reporting Amendment has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the For-Hire Reporting Amendment to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

**Consideration of Public Comments**

The Councils submitted the For-Hire Reporting Amendment for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove the For-Hire Reporting Amendment will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Comments received by November 18, 2013, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 13, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–22717 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 120328229–3656–01]**

**RIN 0648–BC09**

## Atlantic Highly Migratory Species; 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 7; Extension of Comment Period

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is amending the 2006 Consolidated HMS FMP to address bluefin tuna management due to recent trends and characteristics of the bluefin fishery. This action is necessary to meet domestic management objectives of the Magnuson-Stevens Fishery Conservation and Management Act including preventing overfishing, achieving optimal yield, and minimizing bycatch to the extent practicable, as well as the objectives of the Atlantic Tunas Convention Act (ATCA) and obligations pursuant to binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS takes these actions to reduce bluefin dead discards and account for dead discards in all categories; optimize fishing opportunities in all categories; enhance reporting and monitoring; and adjust other aspects of the 2006 Consolidated HMS FMP as necessary. The proposed measures include Allocation measures, Area-Based measures, Bluefin Quota Controls, Enhanced Reporting measures, and other measures with respect to how the various quota categories utilize quota. In the proposed rule that published on August 21, 2013, NMFS announced the end of the comment period as October 23, 2013, which allowed an approximately 60-day comment period. Given the length and complexity of the rule, and to provide additional time for constituents to consider the proposed rule in light of any new recommendations adopted by ICCAT at its November 2013 meeting, NMFS is extending the comment period for this action until December 10, 2013, to provide additional opportunities for public comment.

**DATES:** The public comment period for the proposed rule published at 78 FR 52032, August 21, 2013, is extended from October 23, 2013, until December 10, 2013. Comments must be received no later than December 10, 2013.

**ADDRESSES:** You may submit comments on the proposed rule, as published on August 21, 2013 (78 FR 52032), identified by ''NOAA–NMFS–2013–0101,'' by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0101,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Do not submit electronic comments to individual NMFS staff.
- *Mail:* Submit written comments to: Thomas Warren, Highly Migratory Species Management Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Please mark the outside of the envelope ''Comments on Amendment 7 to the HMS FMP.''
- *Fax:* 978–281–9347, Attn: Thomas Warren.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.),

confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Supporting documents including the draft Environmental Impact Statement (EIS), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) for this action are available from the Highly Migratory Species Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/FMP/AM7.htm* or by sending your request to Thomas Warren at the mailing address or phone numbers specified above.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren or Brad McHale at 978–281–9260; Craig Cockrell or Jennifer Cudney at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** The North Atlantic tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Copies of the 2006 Consolidated HMS FMP and previous amendments are available from the Highly Migratory Species Management Division Web page at *http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/FMPs.htm* or from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

NMFS is amending the 2006 Consolidated HMS FMP to address bluefin tuna management due to recent trends and characteristics of the bluefin fishery (78 FR 52032). This action is necessary to meet domestic management objectives of the Magnuson-Stevens Fishery Conservation and Management Act including preventing overfishing, achieving optimal yield, and minimizing bycatch to the extent practicable, as well as the objectives of the ATCA and obligations pursuant to binding recommendations of ICCAT. NMFS takes these actions to reduce bluefin dead discards and account for dead discards in all categories; optimize fishing opportunities in all categories; enhance reporting and monitoring; and adjust other aspects of the 2006 Consolidated HMS FMP as necessary. As described in the proposed rule, the proposed management measures include: (1) Allocation measures that would modify how the U.S. bluefin quota is allocated among the quota categories; (2) area-based measures that restrict the use of pelagic longline gear in various time and area combinations, modify gear restrictions, or provide conditional access to current pelagic longline closed areas; (3) bluefin quota controls that would strictly limit the total catch (landings and dead discards) of bluefin in the Longline category using different strategies; (4) enhanced reporting measures that would implement a variety of new bluefin reporting requirements; and (5) other measures that would modify to the rules that control how the various quota categories utilize quota, and codify a northern albacore tuna quota.

**Public Comment Extension**

In the proposed rule, NMFS announced the end of the comment period as October 23, 2013, which allowed an approximately 60-day comment period. Given the length and complexity of the rule, and to provide additional time for constituents to consider the proposed rule in light of any new recommendations by ICCAT at its November 2013 meeting, NMFS is extending the comment period for this action until December 10, 2013, to provide additional opportunities for public comment.

These comments will assist NMFS in determining final management measures to conserve and manage the BFT resource and fisheries, consistent with the Magnuson-Stevens Act, ATCA, and the 2006 Consolidated HMS FMP.

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: September 12, 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.*

[FR Doc. 2013–22736 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 130702583–3583–01]**

**RIN 0648–BD40**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Annual Catch Limits and Accountability Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement an omnibus amendment to three of the Mid-Atlantic Fishery Management Council's fishery management plans. The omnibus amendment proposes to change the accountability measures for the Atlantic mackerel, Atlantic bluefish, summer flounder, scup, and black sea bass recreational fisheries. The proposed measures are intended to more appropriately address accountability in the recreational fisheries.

**DATES:** Submit comments on or before October 18, 2013.

**ADDRESSES:** A draft environmental assessment (EA) was prepared for the Recreational Accountability Measures Omnibus Amendment that describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Recreational AM Omnibus Amendment, including the draft EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also available online at *http://www.mafmc.org.*

You may submit comments on this document, identified NOAA–NMFS–2013–0108, by any of the following methods:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0108,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• Fax: (978) 281–9135, Attn: Comments on Recreational Omnibus Amendment, NOAA–NMFS–2013–0108.

• Mail and Hand Delivery: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Recreational Omnibus Amendment.''

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

**SUPPLEMENTARY INFORMATION:**

## Background

In 2011, the Council adopted, and NMFS implemented, an Omnibus Annual Catch Limit (ACL) and Accountability Measures (AM) Amendment to establish AMs for the commercial and recreational fisheries that catch Atlantic mackerel, butterfish, Atlantic bluefish, summer flounder, scup, black sea bass, golden tilefish, ocean quahog, and Atlantic surfclams. The AMs for the recreational fisheries included in-season closure authority for the Regional Administrator when landings were known to have reached the recreational harvest limit (RHL), and pound-for-pound payback of any overage. In 2012, the recreational black sea bass fishery significantly exceeded its RHL. The pound-for-pound payback requirement would drastically limit the recreational black sea bass fishery in fishing year 2014. As a result, the Council decided to review the recreational fishery AMs to determine if a different approach to recreational accountability would be more appropriate. Specifically, the Council wanted to develop AMs that took into account the status of the stock and the biological consequences, if any, resulting from a recreational sector overage.

## Proposed Measures

These proposed regulations implementing these measures were deemed by the Council to be consistent with the amendment, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a letter, dated August 20, 2013, from the Council Chairman to the NMFS Regional Administrator.

1. *Annual Catch Target (ACT) process.* The Council considered modifying the ACT process to either explicitly consider or require a reduction from the recreational ACL that would account for the uncertainty in recreational catch estimates. However, the Council decided, and this rule proposes, no changes to the existing language that states that an ACT may be reduced from ACL to account for uncertainty, but does not require a reduction or that the Monitoring Committee highlight the uncertainty in the recreational estimate. The Council determined that the current approach retains the highest degree of flexibility in its specifications setting process.

2. *In-Season Closure Authority.* This rule proposes to remove the in-season closure authority for the affected recreational fisheries. The Council considered maintaining the closure authority as it currently is (based only on known information), or allowing the Regional Administrator to use projections of recreational landings to determine if a closure is necessary. The delay in receiving recreational landings information, combined with regional differences in the recreational fisheries and the resultant disproportional impacts of an in-season closure, led the Council to recommend removing this authority.

The Council also considered granting the Regional Administrator the ability to modify the recreational management measures (bag limit, minimum fish size, or season) during the fishing year, but decided against that alternative because it was difficult to implement, especially in fisheries operating under conservation equivalency. Conservation equivalency allows each state to establish its own recreational management measures to achieve its state harvest limit partitioned by the Atlantic States Marine Fisheries Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures. This configuration of regulations makes implementing in-season changes to management measures difficult.

3. *Incorporate catch estimate uncertainty in ACL overage determination.* The Council recommends comparing the 3-year moving average of the lower confidence interval of the recreational catch estimate to the 3-year moving average of the recreational ACL to determine if an overage has occurred. The Council considered maintaining the current 3-year average of the catch point estimate for the summer flounder, scup, and black sea bass fisheries or using only a single year's point estimate compared to a single year's ACL for all five recreational fisheries. (Note, Atlantic mackerel and bluefish currently use only a single-year comparison.) The Council also considered using a multi-year approach that would trigger an AM only if more than one overage occurred in a 4-year period.

NMFS notes that there are concerns regarding the Council's recommended approach. The Council's draft document stated that using the lower confidence interval is only appropriate if the stock is in a ''healthy condition.'' The discussion during the Council's June meeting, however, did not address this requirement. The Council's amendment clarifies that if stock status is unknown, if overfishing is occurring, or if the stock is overfished, then the point estimate of the recreational catch would be used. In addition, there is concern that using the lower confidence interval may not meet the requirement in National Standard 2 of the Magnuson-Stevens Act to use the best scientific information available. While there is uncertainty in the recreational catch estimate and there is a degree of probability that the actual catch is lower than the point estimate, there is an equal degree of probability that the actual catch is above the point estimate. Using the point estimate mitigates the risk of the actual catch being significantly above or below the estimate. However, using the lower bound of the confidence interval ensures that the actual catch would almost always be higher than the value used to determine whether an overage occurred.

Accordingly, NMFS seeks comments on whether it should approve the measure that would determine overages in these recreational fisheries by using the 3-year moving average of the lower

confidence interval of the recreational catch estimate, defined by the Council as the point estimate less one standard error, for ''healthy'' stocks.

4. *Incorporate stock status in AM determination.* This rule proposes a system of AMs that would result in a payback if: (1) The stock is overfished (i.e., the most recent estimate of biomass (B), is below the threshold, or $B/B_{MSY} < ½$), under a rebuilding plan, or if stock status is unknown, and the ACL was exceeded; or (2) biomass is below the target, but above the threshold (i.e., $½ < B/B_{MSY} <1$), and the acceptable biological catch (ABC) is exceeded. Otherwise, adjustments to the management measures would be used as an AM. This adjustment would be in addition to any necessary adjustments needed to meet that year's new catch limits.

The Council currently adjusts its management measures to achieve, but not exceed, the next year's catch limit based largely on what the fishery caught in the current year. If the next year's catch limit is higher than this year's catch, then measures may be liberalized. Conversely, if the next year's catch limit is lower than this year's catch, then measures must be tightened. These adjustments happen independently of any catch limit overage. The Council intends for the overage to result in a ''performance review,'' such that if an overage did occur, an adjustment to the expectation that those measures would achieve, but not exceed, the target would be incorporated into the coming year's measures determination. This would result in measures potentially being less liberal, or tightened more, than they otherwise would have been had the overage not occurred.

The Council also considered different combinations of stock status and overage threshold (ABC only, or the overfishing limit (OFL)) to determine when, if at all, a payback was necessary.

5. *Scaled payback calculation.* The Council recommends that the amount of a payback (if determined to be appropriate under #4, above) be scaled relative to the biomass. That is, the payback would be the product of the difference between the catch and the ACL (i.e., the overage amount) and the payback coefficient. The payback coefficient is equal to the difference between the most recent estimates of $B_{MSY}$ and current biomass, divided by $½ B_{MSY}$.

This would result in a smaller payback the closer the estimated biomass is to the target and a larger payback the farther away the estimated biomass is from the target. This scaling is intended to minimize the economic impacts of a payback for healthy stocks, while still accounting for the biological consequences of the overage. This scaling would not be used if the stock was overfished (i.e., if $B/B_{MSY} < ½$), or if the stock status is unknown. In those cases, the payback would be equal to the full amount of the overage. In addition, if the stock is above the target (i.e., $B/B_{MSY} > 1$), then the payback would be zero.

**Classification**

Except for the measure identified as being a concern, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, the Atlantic Bluefish FMP, the Summer Flounder, Scup, and Black Sea Bass FMP, the Magnuson-Stevens Act, and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of the Recreational AM Omnibus Amendment measures in conjunction with the environmental assessment analyses. The Council concluded, and NMFS agrees, that the formal procedures for addressing recreational accountability measures proposed by the Recreational AM Omnibus Amendment are administrative, as they are entirely a description of process. While the Recreational AM Omnibus Amendment provides detailed descriptions of the frameworks for how the AMs will function, the action contains no actual application of those AMs for any of the Mid-Atlantic recreational fisheries. As a result, there are no potential economic impacts to evaluate. Implementation of adjustments to catch limits or management measures with measurable impacts will occur and be analyzed in future actions. As the measures proposed by the Recreational AM Omnibus Amendment are utilized in future actions, the specific impacts resulting from the application of those measures will be evaluated through the Council's specification processes for each FMP.

The Council-conducted analyses identified 714 unique fishing entities in the Northeast Region that would likely be affected by the future implementation of the AMs. However, given the administrative aspects of the proposed measures, there are neither expected direct economic or disproportionate impacts to either small or large regulated entities given the aforementioned description of the administrative processes proposed by the Recreational AM Omnibus Amendment.

As a result, an initial regulatory flexibility analysis is not required and none has been 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, Recordkeeping and reporting requirements.

Dated: September 12, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.24, paragraphs (b)(2) through (b)(5) are revised to read as follows:

**§ 648.24 Fishery closures and accountability measures.**

* * * * *

(b) * * *

(2) *Mackerel commercial landings overage repayment.* If the mackerel ACL is exceeded and commercial fishery landings are responsible for the overage, then landings in excess of the DAH will be deducted from the DAH the following year, as a single-year adjustment to the DAH.

(3) *Non-landing AMs.* In the event that the ACL is exceeded, and that the overage has not been accommodated through the landing-based AM described in paragraph (b)(2) of this section, but is attributable to the commercial sector, then the exact amount, in pounds, by which the commercial ACT was exceeded will be deducted from the following year's commercial ACT, as a single-year adjustment.

(4) *Mackerel recreational AMs.* If the mackerel ACL is exceeded and the recreational fishery landings are responsible for the overage, then the following procedure will be followed:

(i) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate caused the most recent year's ACL to be exceeded will be deducted from the following year's recreational ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) *If the ACL has been exceeded.* If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(B) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made, as described below. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(*1*) *Adjustment to ACT.* If an adjustment to the following year's ACT is required, then the recreational ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient specified in paragraph (b)(4)(ii)(B)(*2*) of this section.

(*2*) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of $B_{MSY}$ and biomass (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(iii) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(5) *Mackerel ACL overage evaluation*—(i) *If the stock is not overfished and overfishing is not occurring.* The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the lower bounds of the confidence intervals, defined for each year as the point estimate less one standard error, of the total recreational catch estimates (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register,** by May 15 of the fishing year in which the deductions will be made.

(ii) *If the stock is overfished or overfishing is occurring.* The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the point estimates of the total recreational catch estimates (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

* * * * *

■ 3. In § 648.103, paragraph (b)(3) is added and paragraphs (c), (d), and (e) are revised to read as follows:

**§ 648.103 Summer flounder accountability measures.**

* * * * *

(b) * * *

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL Evaluation*—(1) *If the stock is not overfished and overfishing is not occurring.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the lower bound of the confidence interval of the total recreational catch estimate (landings and dead discards), defined as the point estimate less one standard error. Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(i) The 3-year moving average will be phased in over the first 3 years, beginning with 2012: The lower bound of the confidence interval of the recreational catch estimate from 2012 will be compared to the 2012 recreational sector ACL; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average of the lower bounds of the confidence interval of the total recreational catch (landings and dead discards) estimates from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs.

(ii) For all subsequent years, the preceding 3-year average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates will be

compared to the preceding 3-year average of the recreational sector ACLs.

(2) *If the stock is overfished or overfishing is occurring.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

■ 4. In § 648.123, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

**§ 648.123 Scup accountability measures.**

* * * * *

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL Evaluation*—(1) *If the stock is not overfished and overfishing is not occurring.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the lower bound of the confidence interval of the total recreational catch estimate (landings and dead discards), defined as the point estimate less one standard error. Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(i) The 3-year moving average will be phased in over the first 3 years, beginning with 2012: The lower bound of the confidence interval of the recreational catch estimate from 2012 will be compared to the 2012 recreational sector ACL; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs.

(ii) For all subsequent years, the preceding 3-year average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates will be compared to the preceding 3-year average of the recreational sector ACLs.

(2) *If the stock is overfished or overfishing is occurring.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target

($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single year adjustment to the recreational ACT will be made, in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur on Federal permit holders.

■ 5. In § 648.143, paragraphs (b), (c), and (d) are revised and paragraph (e) is added to read as follows:

**§ 648.143 Black sea bass Accountability Measures.**

* * * * *

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL Evaluation*—(1) *If the stock is not overfished and overfishing is not occurring.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the lower bound of the confidence interval of the total recreational catch estimate (landings and dead discards), defined as the point estimate less one standard error. Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(i) The 3-year moving average will be phased in over the first 3 years, beginning with 2012: The lower bound of the confidence interval of the recreational catch estimate from 2012 will be compared to the 2012 recreational sector ACL; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs.

(ii) For all subsequent years, the preceding 3-year average of the lower bounds of the confidence intervals of the total recreational catch (landings and dead discards) estimates will be compared to the preceding 3-year average of the recreational sector ACLs.

(2) *If the stock is overfished or overfishing is occurring.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and $B_{MSY}$ (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

■ 6. In § 648.163, paragraphs (a), (d), and (e) are revised to read as follows:

**§ 648.163 Bluefish Accountability Measures (AMs).**

(a) *ACL overage evaluation*—(1) *If the stock is not overfished and overfishing is not occurring.* The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the lower bounds of the confidence intervals, defined for each year as the point estimate less one standard error, of the total recreational catch estimates (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register,** by May 15 of the fishing year in which the deductions will be made.

(2) *If the stock is overfished or overfishing is occurring.* The ACL will be evaluated based on the single-year examination of total commercial catch (landings and dead discards) plus the 3-year moving average of the point estimates of the total recreational catch estimate (landings and dead discards). Both landings and dead discards will be evaluated in determining whether the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

* * * * *

(d) *Recreational landings AM when the ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery are determined to be the sole cause of the overage, and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the $B_{MSY}$ threshold (i.e., $B/B_{MSY}$ is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or $B_{MSY}$) are unknown, and the ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ($B/B_{MSY}$ is greater than 0.5), but below the biomass target ($B/B_{MSY}$ is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the ACL has been exceeded.* If the ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the following year's recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational overage, defined as the difference between the recreational contribution to the catch above the ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimates of $B_{MSY}$ and biomass (i.e., $B_{MSY} - B$) divided by one-half of $B_{MSY}$.

(3) *If biomass is above $B_{MSY}$.* If the most recent estimate of biomass is above $B_{MSY}$ (i.e., $B/B_{MSY}$ is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *AM for when the ACL is exceeded and a sector-to-sector transfer of allowable landings has occurred.* If the fishery-level ACL is exceeded and landings from the recreational fishery and/or the commercial fishery are determined to have caused the overage, and a transfer between the commercial and recreational sector has occurred for the fishing year, as outlined in § 648.162(b)(2), then the amount transferred between the recreational and commercial sectors may be reduced by the ACL overage amount (pound-for-pound repayment) in a subsequent, single fishing year if the Bluefish Monitoring Committee determines that the ACL overage was the result of too liberal a landings transfer between the two sectors. If the Bluefish Monitoring Committee determines that the ACL overage was not the result of the landings transfer, the recreational AMs described in paragraph (d) of this section will be implemented.

* * * * *

[FR Doc. 2013–22737 Filed 9–17–13; 8:45 am]

BILLING CODE 3510–22–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 130717633–3633–01]**

**RIN 0648–XC772**

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to implement the annual catch limit (ACL), acceptable biological catch (ABC), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2013, through June 30, 2014. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2013–2014 ACL for Pacific mackerel is 52,358 metric tons (mt). The proposed ACT, which will be the directed fishing harvest target, is 39,268 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (which is 13,089 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

**DATES:** Comments must be received by October 18, 2013.

**ADDRESSES:** You may submit comments on this document identified by NOAA–NMFS–2013–0135 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0135,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report ''Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2011–12 Fishing Year'' which was updated for this fishing season using a catch-only projection estimate may be obtained from the Southwest Regional Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), where the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL) and annual catch target (ACT) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The purpose of this proposed rule is to implement the 2013/2014 ACL, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework in the FMP. For the 2013/2014 fishing season the ACL is set equal to the result of the ABC calculation. This formula is:

ABC = Biomass * Buffer * $F_{MSY}$ * Distribution with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel for the 2013–2014 management season is 272,932 mt.

2. *Buffer.* Used to addresses uncertainty in the OFL. For the 2013–2014 fishing season the buffer value is 0.913496. This is based on the Council's recommendation of a P* of 0.45 and the SSC recommended sigma of 0.72. The sigma for this year is double that used for previous years due to a higher level of uncertainty in the biomass estimate.

3. $F_{MSY}$. The fishing mortality rate at maximum sustainable yield (MSY) is set to 0.30.

4. *Distribution.* The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast.

At the June 2013 Council meeting, the Council recommended management measures for the Pacific mackerel fishery. These management measures and catch specifications are based on the control rules established in the CPS FMP and a biomass estimate of 272,932 mt (the result of a full stock assessment that was completed in 2011 and updated based on a projection estimate for 2013). This biomass estimate was reviewed and approved by the SSC as the best available science for use in management. Based on recommendations from the Council's SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is proposing, an OFL of 57,316 mt, an ABC of 52,358 mt, an ACL 52,358 and an ACT of 39,268 mt for the 2013–2014 Pacific mackerel fishing season. The Pacific mackerel fishing season runs from July 1 to June 30 of the following year.

Amendment 13 (''ACL'' amendment) to the CPS FMP established a framework that sets the ACL equal to the calculated ABC (reduced from OFL for scientific uncertainty) or the result of the harvest guideline (HG) equation (maximum quota prior to Amendment 13), whichever value is less. This is the first time in the two years since implementation of Amendment 13 that the ACL (maximum directed fishing quota) is based on the ABC as opposed to the HG; which for 2013 was calculated to be 53,494 mt.

If the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (13,089 mt) will be reserved as a set aside for

incidental landings in other CPS fisheries and other sources of mortality. In that event, incidental harvest measures will be in place for the remainder of the fishing year, including a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS. In other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Upon the fishery attaining the ACL/ABC (52,358 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS Southwest Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

Detailed information on the fishery and the stock assessment are found in the report ''Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2011–12 Fishing Year'' (see **ADDRESSES**).

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the reasons as follows:

The purpose of this proposed rule is to implement the 2013–2014 annual specifications for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, and ACL for the Pacific mackerel fishery based on the harvest control rules in the FMP. These specific harvest control rules are applied to the current stock biomass estimate to derive these annual catch limits, which is used to manage the commercial take of Pacific mackerel.

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. 78 FR 37398, 37400 (See Table 1). NMFS conducted its analysis for this action in light of the new size standards

As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below $19 million. Under the former, lower size standards, all entities subject to this action in previous years were considered small entities, and under the new standards they all would continue to be considered small.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast, which primarily includes the fisheries for Pacific sardine, northern anchovy and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Fifty-eight vessels are currently permitted in the Federal CPS limited entry fishery off California. The average annual per vessel revenue in 2012 for the West Coast CPS finfish fleet was well below $19 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was limited or unavailable. For the 2012–2013 fishing year the maximum directed fishing quota was 40,514 mt and was divided into a directed fishery (or ACT) of 30,386 mt and an incidental fishery of 10,128 mt. Approximately 5,488 mt of this HG was harvested in 2012–2013 fishing season with an estimated ex-vessel value of approximately $1.1 million. Using these figures, the average 2012–2013 ex-vessel price per mt of Pacific mackerel was approximately $200.

The proposed ACL (maximum fishing level) for the 2013–2014 Pacific mackerel fishing season is 52,358 mt, with a directed fishing harvest target or ACT of 39,268 mt. This season's directed fishing target is approximately 23% greater than the previous year. If the fleet were to take the entire 2013–2014 ACT, and assuming a coastwide average ex-vessel price per mt of $220 (average of 2011 and 2012 ex-vessel), the potential revenue to the fleet would be approximately $8.6 million. However, this result will depend greatly on market forces within the fishery, and on the regional availability of the resource to the fleet and the fleets' ability to find schools of Pacific mackerel. The annual average U.S. Pacific mackerel harvest from 2002 to 2012 is approximately 4,300 mt, and over those last 10 years has not exceeded 8,000 mt. As a result, it is unlikely that the ACT proposed in this rule will limit the potential profitability to the fleet from catching Pacific mackerel. Accordingly, vessels' profits are not expected to be altered as a result of this rule as it relates to recent catches in the fishery and the previous season's regulation.

Based on the disproportionality and profitability analysis above, this rule, if adopted, will not have a significant economic impact on a substantial number of these small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 11, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, Performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–22731 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 78, No. 181
Wednesday, September 18, 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

### Forest Service

### Shasta County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) meeting scheduled on the date below is cancelled. The meeting was scheduled to meet in Redding, California. The RAC is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463).

**DATES:** The cancelled meeting was scheduled for 9:00 a.m. on September 18, 2013.

**ADDRESSES:** The cancelled meeting was to be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California. Written comments concerning this cancellation may be submitted as described under For Further 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 USDA Service Center. Please call ahead to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Donna Harmon, Designated Federal Officer, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002. Telephone: 530–226–2335 or email at: *dharmon@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.

Dated: September 10, 2013.

**Donna F. Harmon,**

*Designated Federal Official, Shasta-Trinity National Forest.*

[FR Doc. 2013–22621 Filed 9–17–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

### A Reinstatement of a Previously Approved Information Collection

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the National Institute of Food and Agriculture (NIFA) intention to request a reinstatement of a previously approved information collection for the NIFA Current Research Information System (CRIS).

**DATES:** Written comments on this notice must be received by November 22, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: Email: *rmartin@nifa.usda.gov;* Fax: 202–720–0857; Mail: Information Systems and Technology Management, NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216; Hand Delivery/Courier: 800 9th Street SW., Waterfront Centre, Room 4217, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Robert Martin, Records Officer; Office of Information Technology; NIFA/USDA; Email: *rmartin@nifa.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* NIFA Current Research Information System.

*OMB Number:* 0524–0042.

*Expiration Date of Current Approval:* October 31, 2013.

*Type of Request:* Intent to request a reinstatement of a previously approved information collection for three years.

*Abstract:* The United States Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA) administers several competitive, peer-reviewed research, education, and extension programs under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 et seq.); the Smith-Lever Act (7 U.S.C. 341 et seq.); and other legislative authorities. NIFA also administers several capacity programs focused on research. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a et seq.); the Hatch Act of 1887, as amended (7 U.S.C. 361a et seq.); Section 1445 of Public Law 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); and Section 1433 of Subtitle E (Sections 1429–1439), Title XIV of Public Law 95–113, as amended (7 U.S.C. 3191–3201). Each capacity program is subject to a set of administrative requirements: ''Administrative Manual for the McIntire-Stennis Cooperative Forestry Research Program,'' the ''Administrative Manual for the Hatch Research Program,'' the ''Administrative Manual for the Evans-Allen Cooperative Agricultural Research Program,'' and the ''Administrative Manual for the Continuing Animal Health and Disease Research Program''.

The Current Research Information System (CRIS) is the USDA's documentation and reporting system (CRIS form AD–419) and constitutes a necessary information collection for publicly-supported projects as set forth in requirements established in 7 CFR parts 3400 through 3430 pertaining to the aforementioned authorities. This information collection is necessary in order to provide descriptive information regarding individual research activities, education activities extension activities, and integrated activities to document expenditures and staff support for the activities, and to monitor the progress and impact of such activities.

The historical mission of CRIS, broadly stated, is to document the research activities of USDA and the State agricultural research system partners, to satisfy a variety of reporting requirements, and to provide access to research information. This mission supports one of NIFA's primary functions, as stated in the agency strategic plan, of providing program leadership to identify, develop, and manage programs to support university-based and other institutional research. The boundaries and scope of the CRIS mission have been expanded to a more comprehensive purpose of documenting all of the research, education, extension, and integrated activities funded or managed by NIFA. As such, the information collected for CRIS can be utilized in an essentially unlimited number of ways for a wide array of purposes. Generally, CRIS provides ready access to information through public web accessible data, as well as custom reports and services for agency officials, program leaders, administrators, and managers. The information provided helps users keep abreast of the latest developments in agriculture, food science, human nutrition, and forestry research and education; track resource utilization in specific target areas of work; plan for future activities; plan for resource allocation for research, education, and extension programs; avoid costly duplication of effort; aid in coordination of efforts addressing similar problems in different locations; and aid research, education, and extension workers in establishing valuable contacts within the agricultural community.

Descriptive information pertaining to documented projects is available to the general public as well as the research, education, and extension community who contribute to CRIS. Limited financial information is available on individual grants and cooperative agreements as well as summary financial information. A cooperating institution, including a state agricultural experiment station, state forestry school, or land grant institution, has access to all of the data pertaining to that institution. Many institutions take advantage of this access utilizing CRIS system facilities to manage the research programs at their institution. In addition, NIFA staff members can request specialized reports directly from the CRIS staff. These requests can include financial data pertaining to a particular subject area or targeted program. The nature of this type of request characterizes one of the strengths of the CRIS information collection. The system collects obligations and expenditures on individual projects; however, information can be retrieved and aggregated based on subject areas or targeted programs, and corresponding financial information can be tabulated accordingly. The inclusion of subject-based classifications and subject specific descriptive fields supports a unique retrieval capability in this system. The information can be utilized nationally, regionally, or at more detailed levels by program leaders, budget officials, and administrators to identify resource utilization, monitor research, education, and extension activity in specific target areas and support decision making and resource allocation, not just on individual projects but also for specific program areas. This combination of system capabilities facilitates program evaluation, accountability, and decision making processes.

Out of an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC), came the Research Performance Progress Report (RPPR). The RPPR is a uniform format for reporting performance progress on Federally-funded research projects. Upon implementation, the RPPR will be used by agencies that support research and research-related activities to receive interim progress reports. It is intended to replace other interim performance reporting formats currently in use by agencies. In anticipation of the RPPR's implementation, NIFA is working to align activities with that effort. Currently, NIFA is transitioning from calling this collection of grant data CRIS to calling it REEport, a new reporting system with a RPPR based format as part of this transition; the AD–419 will be called the Financial Report. However, the AD–419 still needs to be renewed in its current form to collect the financial data on grant projects.

Estimate of Burden: There will be a reduction made to the burden per response from the previous approval. NIFA estimates that the number of respondents for the AD–419 Financial Report will be 15,199 with an estimated response time of 1.4 hours, representing a total annual burden of 21,279 hours.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden 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 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.

Done at Washington, DC, this 9th day of September, 2013.

**Catherine E. Woteki,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 2013–22712 Filed 9–17–13; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802]**

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Re-conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. and Intent Not To Revoke; 2008–2009

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') is re-conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''). The period of review (''POR'') is February 1, 2008, through January 31, 2009. The Department has preliminarily determined to apply adverse facts available (''AFA'') to Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (''Grobest''). The Department has also preliminarily determined not to revoke the order with respect to Grobest.

**FOR FURTHER INFORMATION CONTACT:** Susan Pulongbarit or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031 or (202) 482–2243, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers: 0306.17.00.03, 0306.17.00.06,

0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice, remains dispositive.

**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 a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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, 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.

**Intent Not To Revoke Order in Part**

We preliminarily find that Grobest has not satisfied the requirements of 19 CFR 351.222(b). Thus, under section 751 of the Act, we preliminarily determine not to revoke in part the order with respect to Grobest.

**Preliminary Results of Review**

The Department has preliminarily determined that the following weighted-average dumping margin exists.

| Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Grobest & I-Mei Industrial (Vietnam) | 25.76 |

**Public Comment**

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[1] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[2] Case and rebuttal briefs should be filed using IA ACCESS.[3]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[4] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

**Cash Deposit Rates**

The Department notes that this notice will not effectuate new cash deposit requirements for Grobest because the 4th AR[5] cash deposit rate has been superseded.[6]

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[7] The Department preliminarily intends to instruct CBP to liquidate entries containing merchandise from Grobest at the AFA rate. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 10, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–22605 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See* 19 CFR 351.309(d).

[2] *See* 19 CFR 351.309(c)(2) and (d)(2).

[3] *See* 19 CFR 351.303.

[4] *See* 19 CFR 351.310(c).

[5] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review,* 75 FR 61122 (October 4, 2010).

[6] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 55800 (September 11, 2012).

[7] *See* 19 CFR 351.212(b)(1).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA179**

### Endangered Species; File No. 14726

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for a permit modification.

**SUMMARY:** Notice is hereby given that Blair Witherington, Ph.D., Florida Fish and Wildlife Conservation Commission, 9700 South A1A, Melbourne Beach, FL, 32951, has requested a modification to scientific research Permit No. 14726–01.

**DATES:** Written, telefaxed, or email comments must be received on or before October 18, 2013.

**ADDRESSES:** The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14726 from the list of available applications. These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705,

Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Rosa L. González, (301)427–8401.

**SUPPLEMENTARY INFORMATION:** The subject modification to Permit No. 14726–01, issued on April 7, 2011 (76 FR 30309) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 14726–01 authorizes the permit holder to locate and describe areas of the Atlantic Ocean and Gulf of Mexico near Florida that serve as developmental habitat for pelagic-stage juvenile and neonate loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and leatherback (*Dermochelys coriacea*) sea turtles, to quantify threats to pelagic sea turtles, and to gather information on their life-history, genetics, movements, behavior, and diet. Researchers are authorized to capture by dip net, flipper and passive integrated transponder tag, measure, weigh, and oral swab sea turtles. A subset of animals may be skin biopsied, fecal sampled, lavaged or have a satellite tag attached. The permit holder requests authorization to (1) expand the action area to the Gulf of Mexico; (2) modify the method for satellite tag attachments; (3) change the sea turtle species, life stages, and number of animals that may be biologically sampled and satellite tagged; (4) add scute and blood sampling to the suite of procedures that can be performed on captured sea turtles; and (5) conduct vessel surveys for counts of leatherback and loggerhead sea turtles. Genetic and stable isotope analyses from this sampling would help Dr. Witherington determine the trophic history of pelagic neonate and neritic stage loggerhead sea turtles and assign a source rookery to these turtles. Satellite telemetry with the trophic histories would further describe the sea turtles' home range, habitat use, residency and intersection with fisheries.

Dated: September 12, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–22609 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC624**

### Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Tropical Western Pacific Ocean, September to October 2013

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an Incidental Take Authorization (ITA).

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Scripps Institution of Oceanography (SIO), a part of the University of California at San Diego, to take marine mammals, by Level B harassment, incidental to conducting a low-energy marine geophysical (seismic) survey in the tropical western Pacific Ocean, September to October 2013.

**DATES:** Effective September 6 through November 12, 2013.

**ADDRESSES:** A copy of the final IHA and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

An ''Environmental Analysis of a Low-Energy Marine Geophysical Survey by the R/V *Roger Revelle* in the Tropical Western Pacific Ocean, September-October 2013,'' was prepared by LGL Ltd., Environmental Research Associates, on behalf of the National Science Foundation (NSF) and SIO. NMFS also issued a Biological Opinion under section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and IHA on marine species listed as threatened and endangered. The NMFS Biological Opinion is available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by

which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

On April 5, 2013, NMFS received an application from the SIO requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey in International Waters (i.e., high seas) and in the Exclusive Economic Zone of the Federated States of Micronesia (Micronesia), the Independent State of Papua New Guinea (Papua New Guinea), the Republic of Indonesia (Indonesia), and the Republic of the Philippines (Philippines) during September to October 2013. The SIO plans to use one source vessel, the R/V *Roger Revelle* (*Revelle*), and a seismic airgun array to collect seismic data in the tropical western Pacific Ocean. The SIO plans to use conventional low-energy, seismic methodology to fill gaps in equatorial Pacific data sets, namely the lack of high-resolution records from the eastern part of the Western Pacific Warm Pool to better assess controls on the hydrologic cycle in the Western Pacific Warm Pool, and a limited meridional coverage to test hypotheses related to the Plio-Pleistocene evolution of the Western Pacific Warm Pool. In addition to the planned operations of the seismic airgun array and hydrophone streamer, SIO intends to operate a multi-beam echosounder and sub-bottom profiler continuously throughout the survey. On June 5, 2013, NMFS published a notice in the **Federal Register** (78 FR 33811) making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities, and SIO has requested an authorization to take 26 species of marine mammals by Level B harassment. Take is not expected to result from the use of the multi-beam and sub-bottom profiler, for reasons discussed in this notice; nor is take expected to result from collision with the source vessel because it is a single vessel moving at a relatively slow speed 5 knots [kts]; 11.1 kilometers per hour [km/hr]; 6.9 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 26 operational days). It is likely that any marine mammal would be able to avoid the vessel.

**Description of the Specified Activity**

SIO plans to conduct low-energy seismic and sediment coring surveys at 10 sites in the tropical western Pacific Ocean in September to October 2013. The study sites are located between approximately 4° South to 8° North and approximately 126.5 to 144.5° East in international waters (i.e., high seas) and in the Exclusive Economic Zones (EEZ) of the Federated States of Micronesia (Micronesia), the Independent State of Papua New Guinea (Papua New Guinea), the Republic of Indonesia (Indonesia), and the Republic of the Philippines (Philippines) (see Figure 1 of the IHA application). Water depths in the survey area range from 450 to 3,000 meters (m) (1,476.4 to 9,842.5 feet [ft]). The seismic surveys are scheduled to occur for 14 to 20 hours at each of the 10 sites for approximately 26 operational days in September to October 2013. Some minor deviation from these dates would be possible, depending on logistics and weather.

The surveys would fill gaps in equatorial Pacific data sets, namely the lack of high-resolution records from the eastern part of the Western Pacific Warm Pool to better assess the controls on the hydrologic cycle in the Western Pacific Warm Pool, and a limited meridional coverage to test hypotheses related to the Plio-Pleistocene evolution of the Western Pacific Warm Pool. To achieve the project's goals, the Principal Investigators, Drs. Y. Rosenthal and G. Mountain of Rutgers University propose to collect low-energy, high-resolution multi-channel seismic profiles and sediment cores in the heart of the Western Pacific Warm Pool. Survey data would also be included in a research proposal submitted to the Integrated Ocean Drilling Program (IODP) for funding consideration to extend the record of millennial climate variability in the western equatorial Pacific Ocean back to the mid-Miocene. Survey and site characterization data would assist the IODP in determining the viability of the sites for potential future drilling.

The procedures to be used for the surveys would be similar to those used during previous seismic surveys by SIO and would use conventional seismic methodology. The survey will involve one source vessel, the R/V *Roger Revelle.* SIO will deploy two (each with a discharge volume of 45 cubic inch [$in^3$] with a total volume of 90 $in^3$) Generator Injector (GI) airgun array as an energy source at a tow depth of 2 m (6.6 ft). The receiving system will consist of one 600 m (1,968.5 ft) long hydrophone streamer. As the GI airguns are towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the onboard processing system.

Straight survey lines will be collected in a grid of intersecting lines. Seven sites would be centered in small 9 x 9 km (4.9 x 4.9 nmi) grids of six intersecting lines (see Figure 1 of the IHA application). One site warrants slightly longer lines and would be surveyed in a large 18 x 18 km (9.7 x 9.7 nmi) grid of six intersection lines (see Figure 1 of the IHA application). Finally, sites S–1a and S–1b are close enough that efficiency in ship use would be achieved by covering both with a single grid of intersecting lines in a 30 x 26 km (16.2 x 14 nmi). Individual survey lines in this grid would be approximately 5 to 10 km (2.7 to 5.4 nmi) apart. The total track distance of survey data, including turns, would be approximately 1,033 km (557.8 nmi). Barring re-organization because of weather considerations or results that develop from data analyzed as sites are completed, sites would be surveyed in the order summarized in Table 1 (Table 1 of the IHA application). All planned seismic data acquisition activities will be conducted by technicians provided by SIO with onboard assistance by the scientists who have planned the study. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

The planned seismic survey (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and

equipment recovery) will consist of approximately 1,032.9 kilometer (km) (557.7 nautical miles [nmi]) of transect lines (including turns) in the survey area in the tropical western Pacific Ocean (see Figure 1 of the IHA application). In addition to the operation of the airgun array, a multi-beam echosounder and a sub-bottom profiler will also likely be operated from the *Revelle* continuously throughout the cruise between the first and last survey sites. There will be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In SIO's estimated take calculations, 25% has been added for those additional operations.

TABLE 1—SURVEY PATTERNS AND LENGTHS AT EACH SURVEY SITE IN THE TROPICAL WESTERN PACIFIC OCEAN DURING SEPTEMBER TO OCTOBER 2013

| Survey site | Survey pattern (km) | Survey length (km) |
|---|---|---|
| WP–5 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| WP–6 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| S–1a, S–1b | 30 x 26 (16.2 x 14) | 349.5 (188.7). |
| WP–3 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| WP–4 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| WP–2 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| WP–1 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| WP–7 | 9 x 9 (4.9 x 4.9 nmi) | 82.2 (44.4 nmi). |
| WP–8 | 18 x 18 (9.7 x 9.7 nmi) | 108 (58.3 nmi). |
| Total | | 1,032.9 (557.7 nmi). |

[1] Sites are listed in the intended order in which surveys would be conducted.

*Dates, Duration, and Specified Geographic Region*

The planned project and survey sites are located between approximately 4° South to 8° North and approximately 126.5 to 144.5° East in International Waters and in the EEZs of Micronesia, Papua New Guinea, Indonesia, and the Philippines (see Figure 1 of the IHA application). Water depths in the survey area range from approximately 450 to 3,000 m (1,476.4 to 9,842.5 ft). The *Revelle* is expected to depart from Lae, Papua New Guinea on September 6, 2013 and arrive at Manila, Philippines on October 1, 2013 (see Table 1 of the IHA application for the order of survey sites). Seismic operations would take approximately 14 to 20 hours at each of the 10 sites, and total transit time to the first site, between all sites, and from the last site would be approximately 13 days. The remainder of the time, approximately 6 days, would be spent collecting sediment cores at the 10 sites, for a total of 26 operational days. Some minor deviation from this schedule is possible, depending on logistics and weather (i.e., the cruise may depart earlier or be extended due to poor weather; there could be additional days of seismic operations if collected data are deemed to be of substandard quality).

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (78 FR 33811, June 5, 2013). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the notice of the proposed IHA (78 FR 33811, June 5, 2013), the IHA application, EA, and associated documents referenced above this section.

**Comments and Responses**

A notice of the proposed IHA for the SIO low-energy seismic survey was published in the **Federal Register** on June 5, 2013 (78 FR 33811). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission's comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their substantive comments and NMFS's responses:

*Comment 1:* The Commission recommends that NMFS require SIO, through the cooperation of the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) and the National Science Foundation (NSF), to determine whether the range of sound speeds (minimums to maximums) at each of the 10 survey sites would increase the associated radii by 20 percent or more and if so, require SIO to re-estimate the proposed exclusion and buffer zones and associated takes of marine mammals accordingly.

*Response:* For clarification, it is not claimed that the model provides exact predictions of received sound levels, instead, the L–DEO model results are used to inform distances for the radii of exclusion zones established for mitigation purposes in a way that comparison with actual data has shown to be generally conservative.

The L–DEO model used for deep water is based on spherical spreading in a constant-velocity medium (where sound level decreases as a function of distance from the source) and incorporates the free surface reflection at the water-air interface. L–DEO has estimated that if for a given source configuration the constant sound speed input to the model changes between 1,475 m/second (4,839.2 ft/second) and 1,545 m/second (5,068.9 ft/second) (a 70 m/second [229.7 ft/second] difference), the corresponding change in exclusion zone radii for mitigation would be on the order of 2%. Based on the results of this sensitivity test, and given that the impact of such 2% variation on the take estimates would be very small, using a single sound speed value, such as 1,521.6 m/second (4,992.1 ft/second), for all model runs is appropriate.

The following statement ''Diebold *et al.* (2010) demonstrated that L–DEO's model underestimates the near-field sound level in waters of intermediate depth (600 to 1,100 m [1,968.5 to 3,608.9 ft])'' is incorrect. In intermediate water depth, a correction factor of 1.5 is applied to the deep-water model results. After application of this correction factor, calibration measurements fall below the model curve adapted to intermediate water depth environments. This process and revised model curve is not described in Diebold *et al.* (2010) but was defined in numerous IHA applications and presented and further explained at a recent meeting with staff from the Commission, NMFS, NSF, and L–DEO. Furthermore, the

''underestimate'' associated with ''. . . the far-field sound level in waters of deep depth (1,600 to 1,700 m [5,249.3 to 5,577.4 ft])'' refers to, at most, 10 data points (out of a thousand for more) with SEL less than 150 dB (Figure 11 in Diebold *et al.,* 2010), and may be perhaps associated with the effect of local topographic features, which would be challenging for any model to accurately predict. In other words, what can be conservatively described as an underestimate of the sound level in the far-field (in this particular case) is referring to only a very small fraction of the measurements. Based on the explanations already provided, NMFS is satisfied that the applicants have provided sufficient scientific justification for their take estimates.

*Comment 2:* The Commission recommends that NMFS require L–DEO and NSF to test the accuracy of L–DEO's model by comparing it to the hydrophone data collected during previous surveys from environments other than the Gulf of Mexico (GOM) prior to the submittal of applications for the NMFS for seismic surveys to be conducted in 2014—if the L–DEO and NSF either do not have enough data to compare the L–DEO's model to other environments or do not assess the accuracy of the model, re-estimate the proposed exclusion and buffer zones and associated takes of marine mammals using site-specific parameters (including sound speed profiles, bathymetry, and bottom characteristics) for all future applications that use the L–DEO's model.

*Response:* NMFS evaluates the reasonableness of take estimates based on the best and latest scientific information available to NMFS at the time of the request. Nonetheless, NSF and L–DEO are proactively investigating novel ways to further verify the accuracy of model results in different geographic regions, including potentially cross-checking model results to hydrophone data collected during previous surveys, within the constraints of the currently limited federal budgetary environment.

*Comment 3:* The Commission recommends that NMFS (1) require SIO to revise its take estimates to include Level B harassment takes associated with the use of sub-bottom profiler and multi-beam echosounder when the airgun array is not firing; and (2) follow a consistent approach of requiring the assessment of Level B harassment takes for those types of sound sources (e.g., sub-bottom profilers, echosounders, side-scan sonar, and fish-finding sonar) by all applicants, who propose to use such sources.

*Response:* As described in NSF's application and the NSF/USGS PEIS (2011), they expect the sound levels produced by the sub-bottom and multi-beam echosounder sound sources to be exceeded by the sound levels produced by the airguns for the majority of the time. Additionally, because of the beam pattern and directionality of these sources, combined with their lower source levels, it is far less likely that these sources (which are used in some capacity by the vast majority of vessels on the water) will take marine mammals independently from the takes that have already been estimated for the airguns. Therefore, NMFS does not believe it is necessary to authorize additional takes for these sources for this action. Nonetheless, NMFS is currently evaluating the broader use of these types of sources to determine under what specific circumstances coverage for incidental take would be advisable (or not) and is working on guidance that would outline a consistent recommended approach (to be used by applicants and NMFS) for addressing the potential impacts of these types of sources.

*Comment 4:* The Commission recommends that NMFS require SIO to estimate the number of marine mammals taken when the sub-bottom profiler and multi-beam echosounder are used in the absence of the airgun array based on the 120 dB (rms) threshold rather than the 160 dB (rms) threshold.

*Response:* NMFS disagrees with the Commission's recommendation that NMFS require SIO to estimate the number of marine mammals taken when the sub-bottom profiler and multi-beam echosounder are used in absence of the airgun array based on the 120 dB (rms) threshold rather than the 160 dB (rms) threshold. 160 dB (rms) is the appropriate threshold for these sound sources. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, echosounder signals are not continuous sounds but rather intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (less than 1 second), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Echosounder signals also have durations that are typically very brief (less than 1 second), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds, which typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). With regard to behavioral thresholds, we therefore consider the temporal and spectral characteristics of echosounder signals to more closely resemble those of an impulse sound than a continuous sound.

The Commission suggests that, for certain sources considered here, the interval between pulses would not be discernible to the animal, thus rendering them effectively continuous. However, an echosounder's ''rapid staccato'' of pulse trains is emitted in a similar fashion as odontocete echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (e.g., Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive echosounder signals as being continuous.

In conclusion, echosounder signals are intermittent rather than continuous signals, and the fine temporal resolution of the marine mammal auditory system allows them to perceive these sounds as such. Further, the physical characteristics of these signals indicate a greater similarity to the way that intermittent, impulsive sounds are received. Therefore, the 160 dB threshold (typically associated with impulsive sources) is more appropriate than the 120 dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

*Comment 5:* The Commission recommends that NMFS consult with experts in the field of sound propagation and marine mammal hearing to revise the acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources, including sub-bottom profilers and echosounders.

*Response:* NMFS agrees with the Commission's recommendation to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources, and are currently in process of producing such revisions. In particular, NMFS

recognizes the importance of context (e.g., behavioral state of the animals, distance) in behavioral responses. The current behavioral categorization (i.e., impulse vs. continuous) does not account for context and is not appropriate for all sound sources. Thus, updated NOAA Acoustic Guidance (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*) will more appropriately categorize behavioral harassment criteria by activity type.

*Comment 6:* The Commission recommends that NMFS require SIO to use the (1) original density estimates from Dolar *et al.* (2006) rather than the estimates that have been adjusted by an arbitrary correction factor of 0.5; (2) density estimates for Fraser's dolphins from the Sulu Sea in 1994 and 1995 rather than just 1995; and (3) adjust density estimates for all species using some measure of uncertainty (e.g., two standard deviations) and re-estimate the numbers of takes accordingly.

*Response:* Based on the Commission's recommendation, NMFS has used the original density estimates from Dolar *et al.* (2006) without the adjusted correction factor of 0.5 for several marine mammals species (i.e., spinner, pantropical, Fraser's, bottlenose, and Risso's dolphins, and short-finned pilot, melon-headed, and dwarf sperm whales) and has recalculated the estimated possible number of individuals that may be exposed to sound levels greater than or equal to 160 dB (rms) during SIO's low-energy seismic survey, see Table 4 (below).

For estimating takes of Fraser's dolphins, NMFS has used the original density estimates from Dolar *et al.* (2006) without the adjusted correction factor of 0.5 (i.e., 430 animals/1,000 km$^2$) and the density estimates for Fraser's dolphins from the Sulu Sea in 1994 (i.e., 730 animals/1,000 km$^2$) and 1995 (i.e., 430 animals/1,000 km$^2$). The combined density for 1994 and 1995 is 580 animals/1,000 km$^2$. NMFS applied this combined density based on the Commission's recommendation. Using SIO's approach for calculating take of Fraser's dolphins, the number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa (rms) was determined by multiplying the expected species density (i.e., 580 animals/1,000 km$^2$), times the anticipated area to be ensonified to that level during airgun operations excluding overlap (i.e., 1,063.8 km$^2$ including 25% contingency), which is approximately 617 animals.

Regarding the Commission's recommendation to adjust density estimates for all marine mammal species using some measure of uncertainty (e.g., two standard deviations) and re-estimate the number of takes, please see the response to Comment 7 (below).

*Comment 7:* The Commission recommends that NMFS formulate policy or guidance regarding a consistent approach for how applicants should incorporate uncertainty in density estimates.

*Response:* The availability of representative density information for marine mammal species varies widely across space and time. Depending on where surveys and modeling have been conducted, it may be necessary to consult estimates that are from a different area or season, that are at a non-ideal spatial scale, or that have not been updated in several years. NMFS is currently evaluating available density information and is working on guidance that would outline a consistent approach for addressing uncertainty in specific situations where certain types of data are or are not available.

*Comment 8:* The Commission recommends that NMFS consult with the funding agency (i.e., NSF) and individual applicants (e.g., SIO and L–DEO) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal takes and the actual numbers of marine mammals taken—the assessment should account for applicable g(0) and f(0) values.

*Response:* There will be periods of transit time during the cruise, and PSOs will be on watch prior to and after the seismic portions of the surveys, in addition to during the surveys. The collection of this visual observational data by PSOs may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers, but is unlikely that the information gathered from these cruises along would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

NMFS is currently working to develop recommendations for how applicants can appropriately correct marine mammal detections to better estimate the number of animals likely taken during specified activities, in consideration of those that are not detected.

*Comment 9:* The Commission recommends that NMFS work with NSF to analyze monitoring data to assess the effectiveness of ramp-up procedures as a mitigation measure for seismic surveys.

*Response:* NMFS acknowledges the Commission's request for an analysis of ramp-ups and will work with NSF and SIO to help identify the effectiveness of the mitigation measure for seismic surveys. The IHA requires that PSOs on the *Revelle* make observations for 30 minutes prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the seismic vessel, sighting cue, apparent reaction of the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort wind force and sea state, visibility, and sun glare.

One of the primary purposes of monitoring is to result in ''increased knowledge of the species'' and the effectiveness of required monitoring and mitigation measures; the effectiveness of ramp-up as a mitigation measure and marine mammal reaction to ramp-up would be useful information in this regard. NMFS requires NSF and SIO to gather all data that could potentially provide information regarding the effectiveness of ramp-up as a mitigation measure in its monitoring report. However, considering the low numbers of marine mammal sightings and low number of ramp-ups it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided PSOs detect animals during ramp-up.

*Comment 10:* An individual opposes the issuance of the IHA to SIO, SIO's project is killing marine mammals.

*Response:* As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 33811, June 5, 2013), as well as in this document, NMFS does not believe that SIO's low energy seismic survey would cause injury, serious injury, or mortality to marine mammals, nor are those authorized under the IHA. The required monitoring and mitigation measures that SIO would implement during the low-energy seismic survey would further reduce the adverse effect on marine mammals to the lowest levels

practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the low-energy seismic survey. Description of the Marine Mammals in the Specified Geographic Area of the Specified Activity

The marine mammal species that potentially occur within the tropical western Pacific Ocean include 26 species of cetaceans and one sirenian. In addition to the 26 species known to occur in the tropical western Pacific Ocean, there are three species known to occur in coastal waters of the study area, these include the Australian snubfin dolphin (*Orcaella heinsohni*), Indo-Pacific humpback dolphin (*Sousa chinensis*), and the Indo-Pacific bottlenose dolphin (*Tursiops aduncus*). However, these species do not occur in in slope or deep, offshore waters where the planned activities would take place. Those three species are not considered further in this document. No pinnipeds are known to occur in the study area.

The marine mammals that generally occur in the action area belong to three taxonomic groups: Mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the dugong). Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale, as well as the dugong. Of those endangered species, the humpback, sei, fin, blue, and sperm whale is likely to be encountered in the survey area. The dugong (*Dugong dugon*) is the one marine mammal species mentioned in this document that is managed by the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis; all others are managed by NMFS.

Few systematic surveys have been conducted in the tropical western Pacific Ocean, and none have taken place during September to October. Borsa and Nugroho (2010) conducted 1,561 km (842.9 nmi) of surveys of Raja Ampat waters, including the Halmahera Sea, in West Papua during November to December 2007. Visser (2002 in Visser and Bonoccorso, 2003) conducted preliminary surveys in Kimbe Bay, New Britain, Papua New Guinea. Miyazaki and Wada (1978) surveyed 11,249 km (6,074 nmi) in the wider tropical Pacific, including Micronesia, and the waters off Papua New Guinea and the Solomon Islands during January to March 1976. Shimada and Miyashita (2001) conducted 8,721 km (4,709 nmi) of surveys in Micronesia, the Solomon Islands, and north of Papua New Guinea during February to March from 1999 to 2001. Oremus (2011) described 4,523 km (2,442.2 nmi) of surveys in the Solomon Islands during November of 2009 and 2010. Dolar *et al.* (2006) surveyed the waters of the central Philippines, including the Sulu Sea, during May to June 1994 and 1995; 2,747 km (1,483.3 nmi) were covered. In May 1996, Dolar *et al.* (1997) surveyed 825 km (445.5 nmi) in the southern Sulu Sea. Another survey of relevance to the survey area is one that took place during January to April 2007 in the waters of Guam and the Commonwealth of the Northern Mariana Islands; a total of 11,033 km (5,957.3 nmi) were surveyed in the area 10 to 18° North and 142 to 148° East (SRS-Parsons, 2007; Fulling *et al.,* 2011). The aforementioned surveys took place in shallow coastal waters as well as deeper offshore waters. Records from the Ocean Biogeographic Information System (OBIS) database hosted by Rutgers and Duke University (Read *et al.,* 2009) were also considered. Table 3 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the study area during September to October 2013.

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE LOW-ENERGY SEISMIC SURVEY AREA IN THE TROPICAL WESTERN PACIFIC OCEAN

[See text and Table 3 in SIO's application for further details]

| Species | Habitat | Population estimate | ESA [1] | MMPA [2] |
|---|---|---|---|---|
| Mysticetes: | | | | |
| Humpback whale (*Megaptera novaeangliae*) | Pelagic, nearshore waters, and banks | [3] 3,520 | EN | D |
| Minke whale (*Balaenoptera acutorostrata*) | Pelagic and coastal | [4] 25,000 | NL | NC |
| Bryde's whale (*Balaenoptera edeni*) | Pelagic and coastal | [5] 21,000 | NL | NC |
| Omura's whale (*Balaenoptera omurai*) | Pelagic and coastal | NA | NL | NC |
| Sei whale (*Balaenoptera borealis*) | Primarily offshore, pelagic | [6] 7,260 to 12,620 | EN | D |
| Fin whale (*Balaenoptera physalus*) | Continental slope, pelagic | [7] 13,620 to 18,680 | EN | D |
| Blue whale (*Balaenoptera musculus*) | Pelagic, shelf, coastal | NA | EN | D |
| Odontocetes: | | | | |
| Sperm whale (*Physeter macrocephalus*) | Pelagic, deep sea | [8] 29,674 | EN | D |
| Pygmy sperm whale (*Kogia breviceps*) | Deep waters off the shelf | NA | NL | NC |
| Dwarf sperm whale (*Kogia sima*) | Deep waters off the shelf | [9] 11,200 | NL | NC |
| Cuvier's beaked whale (*Ziphius cavirostris*) | Pelagic | [9] 20,000 | NL | NC |
| Longman's beaked whale (*Indopacetus pacificus*) | Pelagic | NA | NL | NC |
| Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*) | Pelagic | [10] 25,300 | NL | NC |
| Blainville's beaked whale (*Mesoplodon densirostris*) | Pelagic | [10] 25,300 | NL | NC |
| Killer whale (*Orcinus orca*) | Pelagic, shelf, coastal | [9] 8,500 | NL | NC |
| Short-finned pilot whale (*Globicephala macrorhynchus*) | Pelagic, shelf coastal | [12] 53,608 | NL | NC |
| False killer whale (*Pseudorca crassidens*) | Pelagic | [12] 16,668 | NL | NC |
| Melon-headed whale (*Peponocephala electra*) | Pelagic | [9] 45,400 | NL | NC |
| Pygmy killer whale (*Feresa attenuata*) | Pelagic | [9] 38,900 | NL | NC |
| Risso's dolphin (*Grampus griseus*) | Deep water, seamounts | [12] 83,289 | NL | NC |
| Bottlenose dolphin (*Tursiops truncatus*) | Offshore, inshore, coastal, estuaries | [12] 168,792 | NL | NC |
| Rough-toothed dolphin (*Steno bredanensis*) | Pelagic | [11] 107,633 | NL | NC |
| Fraser's dolphin (*Lagenodelphis hosei*) | Pelagic | [9] 289,300 | NL | NC |
| Striped dolphin (*Stenella coeruleoalba*) | Pelagic | [13] 570,038 | NL | NC |
| Pantropical spotted dolphin (*Stenella attenuata*) | Coastal, pelagic | [11] 438,064 | NL | NC |

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE LOW-ENERGY SEISMIC SURVEY AREA IN THE TROPICAL WESTERN PACIFIC OCEAN—Continued

[See text and Table 3 in SIO's application for further details]

| Species | Habitat | Population estimate | ESA [1] | MMPA [2] |
|---|---|---|---|---|
| Spinner dolphin (*Stenella longirostris*) | Coastal, pelagic | [13] 734,837 | NL | NC |
| Sirenians: | | | | |
| Dugong (*Dugong dugon*) | Coastal | NA | EN | D |

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] Oceania (Constantine *et al.,* 2010).
[4] Northwest Pacific and Okhotsk Sea (IWC, 2013).
[5] Western North Pacific (IWC, 2013).
[6] North Pacific (Tillman, 1977).
[7] North Pacific (Ohsumi and Wada, 1974).
[8] Western North Pacific (Whitehead, 2002).
[9] Eastern Tropical Pacific (Wade and Gerrodette, 1993).
[10] Eastern Tropical Pacific, all Mesoplodon spp. (Wade and Gerrodette, 1993)
[11] Eastern Tropical Pacific (Gerrodette *et al.,* 2008).
[12] Western North Pacific (Miyashita, 1993).
[13] Whitebelly stock in Eastern Tropical Pacific (Gerrodette *et al.,* 2008).

Refer to sections 3 and 4 of SIO's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the project area. The application also presents how SIO calculated the estimated densities for the marine mammals in the survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the IHA.

**Potential Effects on Marine Mammals**

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected. A more comprehensive review of these issues can be found in the ''Programmatic Environmental Impact Statement/ Overseas Environmental Impact Statement prepared for Marine Seismic Research that is funded by the National Science Foundation and conducted by the U.S. Geological Survey'' (NSF/ USGS, 2011).

The notice of the proposed IHA (78 FR 33811, June 5, 2013) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. NMFS refers the reader to SIO's application and EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels.

**Anticipated Effects on Marine Mammal Habitat, Fish, and Invertebrates**

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish, fisheries, and invertebrates in the notice of the proposed IHA (78 FR 33811, June 5, 2013). The seismic survey will not result in any permanent impact on habitats used by the marine mammals in the survey area, including the food sources they use (i.e., fish and invertebrates), and there will be no physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible, which was considered in further detail in this notice of the proposed IHA (78 FR 33811, June 5, 2013), as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

**Mitigation**

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

SIO reviewed the following source documents and have incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the recently completed NSF/ USGS PEIS (2011);

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, SIO and/ or its designees have planned to implement the following mitigation measures for marine mammals:

(1) Exclusion zones around the sound source;

(2) Speed and course alterations;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

*Exclusion Zones*—SIO use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 3 (see below) shows the distances at which one would expect to receive three sound levels (160 and 180 dB) from the two GI airgun array. The 180 dB level shut-down criteria are applicable to cetaceans, as specified by NMFS (2000). SIO used these levels to establish the exclusion and buffer zones.

Received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 45 $in^3$ Nucleus G airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). In addition, propagation measurements of pulses from two GI airguns have been reported for shallow water (approximately 30 m [98.4 ft] depth in the GOM (Tolstoy *et al.,* 2004). However, measurements were not made for the two GI airguns in deep water. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels are predicted to be 180 and 160 dB re 1 μPa (rms) in deep water were determined (see Table 3 below).

Empirical data concerning the 180 and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009). Results of the 36 airgun array are not relevant for the two GI airguns to be used in the planned survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). Measurements were not made for the two GI airgun array in deep water; however, SIO plans to use the safety radii predicted by L–DEO's model for the planned GI airgun operations in deep water, although they are likely conservative given the empirical results for the other arrays. The 180 dB (rms) radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish exclusion zones. Therefore, the assumed 180 dB radii are 100 m for intermediate and deep water, respectively. If the PSO detects a marine mammal(s) within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately.

Table 3 summarizes the predicted distances at which sound levels (160 and 180 dB [rms]) are expected to be received from the two airgun array operating in intermediate (100 to 1,000 m [328 to 3,280 ft]) and deep water (greater than 1,000 m [3,280 ft]) depths.

TABLE 3—PREDICTED AND MODELED (TWO 45 $IN^3$ GI AIRGUN ARRAY) DISTANCES TO WHICH SOUND LEVELS ≥ 180 AND 160 dB re: 1 μPa (RMS) COULD BE RECEIVED IN INTERMEDIATE AND DEEP WATER DURING THE LOW-ENERGY SURVEY IN THE TROPICAL WESTERN PACIFIC OCEAN, SEPTEMBER TO OCTOBER 2013

| Source and total volume | Tow depth (m) | Water depth (m) | Predicted RMS radii distances (m) for 2 GI airgun array | |
|---|---|---|---|---|
| | | | 160 dB | 180 dB |
| Two GI Airguns (90 $in^3$) | 2 | Intermediate (100 to 1,000) | 600 (1,968.5 ft) | 100 (328 ft). |
| Two GI Airguns (90 $in^3$) | 2 | Deep (> 1,000) | 400 (1,312.3 ft) | 100 (328 ft). |

*Speed and Course Alterations*—If a marine mammal is detected outside the exclusion zone and, based on its position and direction of travel (relative motion), is likely to enter the exclusion zone, changes of the vessel's speed and/or direct course will be considered if this does not compromise operational safety. This would be done if operationally practicable while minimizing the effect on the planned science objectives. For marine seismic surveys towing large streamer arrays, however, course alterations are not typically implemented due to the vessel's limited maneuverability. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the exclusion zone. If the marine mammal appears likely to enter the exclusion zone, further mitigation actions will be taken, including further course alterations and/or shut-down of the airgun(s). Typically, during seismic operations, the source vessel is unable to change speed or course, and one or more alternative mitigation measures will need to be implemented.

*Shut-down Procedures*—SIO will shut-down the operating airgun(s) if a marine mammal is detected outside the exclusion zone for the airgun(s), and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the exclusion zone, the seismic source will be shut-down before the animal is within the exclusion zone. Likewise, if a marine mammal is already within the exclusion zone when first detected, the seismic source will be shut down immediately.

Following a shut-down, SIO will not resume airgun activity until the marine mammal has cleared the exclusion zone. SIO will consider the animal to have cleared the exclusion zone if:

- A PSO has visually observed the animal leave the exclusion zone, or
- A PSO has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy and dwarf sperm, killer, and beaked whales).

Although power-down procedures are often standard operating practice for seismic surveys, they are not going to be used during this planned seismic survey because powering-down from two airguns to one airgun would make only a small difference in the exclusion zone(s)—but probably not enough to allow continued one-airgun operations if a marine mammal came within the exclusion zone for two airguns.

*Ramp-up Procedures*—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns and to provide the time for them to leave the area avoiding any potential injury or impairment of their hearing abilities. SIO will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down shut down has exceeded that period. SIO proposes that, for the

present cruise, this period would be approximately 15 minutes. L–DEO and USGS has used similar periods (approximately 15 minutes) during previous low-energy seismic surveys.

Ramp-up will begin with a single GI airgun (45 $in^3$). The second GI airgun (45 $in^3$) will be added after 5 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if marine mammals are sighted, a shut-down will be implemented as though both GI airguns were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, SIO will not commence the ramp-up. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array will not be visible during those conditions. If one airgun has operated, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, but only where the exclusion zone is small enough to be visible. SIO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

*Monitoring*

SIO will conduct marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. SIO's ''Monitoring Plan'' is described below this section. SIO understand that this monitoring plan will be subject to review by NMFS and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. SIO is prepared to discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

*Vessel-Based Visual Monitoring*

SIO's PSOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups of the airguns at night. PSOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (i.e., greater than approximately 15 minutes for this cruise). When feasible, PSOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSO observations, the airguns will be shut-down when marine mammals are observed within or about to enter a designated exclusion zone. The exclusion zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the tropical western Pacific Ocean, at least three PSOs will be based aboard the *Revelle.* SIO will appoint the PSOs with NMFS's concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, at least one PSO will be on duty from observation platforms (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. PSO(s) will be on duty in shifts no longer than 4 hours in duration. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Revelle* is a suitable platform for marine mammal observations and will serve as the platform from which PSOs will watch for marine mammals before and during seismic operations. The *Revelle* has been used for that purpose during the routine California Cooperative Oceanic Fisheries Investigations (CalCOFI). Two locations are likely as observation stations onboard the *Revelle.* Observing stations are located on the 02 level, with the PSO eye level at approximately 10.4 m (34.1 ft) above the waterline. At a forwarded-centered position on the 02 deck, the view is approximately 240°; an aft-centered view includes the 100 m (328.1 ft) radius area around the GI airguns. The PSO eye level on the bridge is approximately 15 m (49.2 ft) above sea level. Standard equipment for PSOs will be reticule binoculars and optical range finders. At night, night-vision equipment will be available. The PSOs will be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shut-down. Observing stations will be at the 02 level with PSO's eye level approximately 10.4 m (34 ft) above sea level—one forward on the 02 deck commanding a forward-centered, approximately 240° view around the vessel, and one atop the aft hangar, with an aft-centered view that includes the radii around the airguns. The eyes on the bridge watch will be at a height of approximately 15 m (49 ft); PSOs will work on the enclosed bridge and adjoining aft steering station during any inclement weather. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (e.g., 25 x 150), optical range-

finders (to assist with distance estimation), and the naked eye. At night, night-vision equipment will be available. The optical range-finders are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. Estimating distances is done primarily with the reticles in the binoculars. The PSO(s) will be in wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or a shut-down of the seismic source.

When marine mammals are detected within or about to enter the designated exclusion zone, the airguns will immediately be shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the exclusion zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

*PSO Data and Documentation*

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially ''taken'' by harassment (as defined in the MMPA). They will also provide information needed to order a shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during daytime periods when the *Revelle* is underway without seismic operations (i.e., transits to, from, and through the study area) to collect baseline biological data.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, wind force, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding ramp-ups or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The data accuracy will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database by the PSOs at sea. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide the following information:

1. The basis for real-time mitigation (airgun shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

SIO will submit a comprehensive report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report submitted to NMFS will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (i.e., dates, times, locations, activities, and associated seismic survey activities). The report will minimally include:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals sightings including date, water depth, numbers, age/size/gender, and group sizes; and analyses of the effects of seismic operations;
- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha.* In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), SIO will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Pacific Islands Region Marine Mammal Stranding and Entanglement Hotline at 1–888–256–9840 (*David.Schofield@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take.

NMFS shall work with SIO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SIO may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that SIO discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), SIO will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Pacific Islands Region Marine Mammal Stranding and Entanglement Hotline (1–888–256–9840) and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SIO to determine whether modifications in the activities are appropriate.

In the event that SIO discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate or advanced decomposition, or scavenger damage), SIO will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS Pacific Islands Regional Marine Mammal Stranding and Entanglement Hotline (1–888–256–9840), and/or by email to the Pacific Islands Regional Stranding Coordinator (*David.Schofield@noaa.gov*), within 24 hours of discovery. SIO will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Level B harassment is anticipated and authorized as a result of the low-energy marine seismic survey in the tropical western Pacific Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array are expected to result in the behavioral disturbance of some marine mammals. There is no evidence that the planned activities could result in injury, serious injury, or mortality for which SIO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe SIO's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the planned seismic program in the tropical western Pacific Ocean. The estimates are based on a consideration of the number of marine mammals that could be harassed by approximately 1,033 km (557.8 nmi) of seismic operations with the two GI airgun array to be used as depicted in Figure 1 of the IHA application.

During simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the multi-beam echosounder and sub-bottom profiler would already be affected by the airguns. During times when the airguns are not operating, it is unlikely that marine mammals will exhibit more than minor, short-term responses to the multi-beam echosounder and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously in our notice of the proposed IHA (78 FR 33811, June 5, 2013). Therefore, take was not authorized specifically for these sound sources beyond that which is already authorized for airguns.

The only densities reported for the overall survey area are for eight species sighted during vessel-based surveys in coastal and oceanic waters of the Sulu Sea, Philippines, covering an area of approximately 23,000 $km^2$ (6,705.7 $nmi^2$), during May to June 1994 and 1995 (Dolar *et al.,* 2006). To supplement those density data, SIO used densities for seven other species expected to occur in the survey area that were sighted during a systematic vessel-based marine mammal survey in Guam and the southern Commonwealth of the Northern Mariana Islands (CNMI) during January to April 2007 (Fulling *et al.,* 2011). The cruise area was defined by the boundaries 10 to 18° North and 142 to 148° East, encompassing an area of approximately 585,000 $km^2$ (170,558.7 $nmi^2$). For five species not sighted in either survey, but expected to occur in the planned survey area, SIO also used densities for the ''outer EEZ stratum'' of Hawaiian waters, covering approximately 2,240,000 $km^2$ (653,079.5 $nmi^2$), based on a survey conducted in August to November 2002 (Barlow, 2006). All three surveys used standard line-transect protocols developed by NMFS Southwest Fisheries Science Center. Survey effort was 2,313 km (1,248.9 nmi) in the Sulu Sea, 11,033 km (5,957.3 nmi) in the CNMI, and 13,500 km (7,289.4 nmi) in Hawaii.

The densities mentioned above have been corrected, by the original authors, for trackline detection probability bias, and in one of the three areas, for availability bias. Trackline detection probability bias is associated with diminishing sightability with increasing lateral distance from the trackline f(0). Availability bias refers to the fact that there is less than 100% probability of sighting an animal that is present along the survey trackline, and it is measured by g(0). Dolar *et al.* (2006) and Fulling *et al.* (2011) did not correct the CNMI densities for g(0), which for all but large (greater than 20) groups of dolphins (where g(0) = 1), resulted in underestimates of density. Although there is some uncertainty about the representatives of the data and the assumptions used in the calculations below, the approach used here is believed to be the best available approach.

TABLE 4—ESTIMATED DENSITIES AND POSSIBLE NUMBER OF MARINE MAMMAL SPECIES THAT MIGHT BE EXPOSED TO GREATER THAN OR EQUAL TO 160 dB DURING SIO'S LOW-ENERGY SEISMIC SURVEY (ENSONIFIED AREA 1,063.8 km²) IN THE TROPICAL WESTERN PACIFIC OCEAN, SEPTEMBER TO OCTOBER 2013

| Species | Density (#/1,000 km²) [1] | Calculated take (i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 μPa) [2] | Approximate percentage of best population estimate of stock (calculated take) [3] | Requested take authorization [4] |
|---|---|---|---|---|
| Mysticetes; | | | | |
| Humpback whale | NA | 0 | 0.03 | 1 |
| Minke whale | NA | 0 | 0.01 | 3 |
| Bryde's whale | 0.41 | 0 | 0.01 | 2 |
| Omura's whale | NA | 0 | NA | 2 |
| Sei whale | 0.29 | 0 | 0.03 to 0.02 | 2 |
| Fin whale | NA | 0 | 0.05 to 0.04 | 7 |
| Blue whale | NA | 0 | NA | 2 |
| Odontocetes: | | | | |
| Sperm whale | 1.23 | 1 | 0.02 (<0.01) | 5 |
| Pygmy sperm whale | 3.19 | 3 | NA (NA) | 3 |
| Dwarf sperm whale | 10 | 10 | 0.09 (0.09) | 10 |
| Cuvier's beaked whale | 6.8 | 7 | 0.04 (0.04) | 7 |
| Longman's beaked whale | 0.45 | 0 | NA (NA) | 18 |
| Ginkgo-toothed beaked whale | 0 | 0 | <0.01 (0) | 2 |
| Blainville's beaked whale | 1.28 | 1 | <0.01 (<0.01) | 2 |
| Killer whale | 0.16 | 0 | 0.08 | 7 |
| Short-finned pilot whale | 320.0 | 340 | 0.63 (0.63) | 340 |
| False killer whale | 1.11 | 1 | 0.06 (<0.01) | 10 |
| Melon-headed whale | 40.0 | 42 | 0.09 (0.09) | 42 |
| Pygmy killer whale | 0.14 | 0 | 0.02 (0) | 6 |
| Risso's dolphin | 30.0 | 32 | 0.04 (0.04) | 32 |
| Bottlenose dolphin | 110.0 | 118 | 0.07 (0.07) | 118 |
| Rough-toothed dolphin | 0.29 | 0 | 0.01 (0) | 9 |
| Fraser's dolphin | 580.0 | 617 | 0.21 (0.21) | 617 |
| Striped dolphin | 6.16 | 7 | <0.01 (<0.01) | 27 |
| Pantropical spotted dolphin | 650.0 | 692 | 0.16 (0.16) | 692 |
| Spinner dolphin | 1,370.0 | 1,458 | 0.2 (0.2) | 1,458 |

NA = Not available or not assessed.

[1] Densities calculated from Table 4 of Barlow (2006) using the abundance in the outer EEZ stratum and the surface area of the stratum given on p. 452 of Barlow (2006).

[2] Calculated take is estimated density (reported density times correction factor) multiplied by the area ensonified to 160 dB (rms) around the planned seismic lines, increased by 25% for contingency.

[3] Requested (and calculated) takes expressed as percentages of the regional populations.

[4] Requested Take Authorization increased to mean group size for species for which densities were not available but that have been sighted in the survey area and for species whose calculated takes were less than group size.

SIO estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals in the area (in the absence of the a seismic survey). The number of possible exposures (including repeat exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, excluding areas of overlap. During the survey, the transect lines are widely spaced relative to the 160 dB (rms) distance (600 m for intermediate water depths and 400 m for deep water depths). Thus, the area including overlap is 1.07 times the area excluding overlap, so a marine mammal that stayed in the survey areas during the entire survey could be exposed slightly more than once, on average. However, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa (rms) was calculated by multiplying:

(1) The expected species density (in number/km²), times

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by ''drawing'' the applicable 160 dB buffer (see Table 1 of the IHA application) around each seismic line, and then calculating the total area within the buffers.

Applying the approach described above, approximately 851 km² (approximately 1,063.8 km² including the 25% contingency) would be within the 160 dB isopleth on one or more occasions during the survey. The take calculations within the study sites do not explicitly add animals to account for the fact that new animals (i.e., turnover) are not accounted for in the initial density snapshot and animals could also approach and enter the area ensonified above 160 dB; however, studies suggest that many marine mammals will avoid exposing themselves to sounds at this level, which suggests that there would not necessarily be a large number of new animals entering the area once the seismic survey started. Because this approach for calculating take estimates does not allow for turnover in the

marine mammal populations in the area during the course of the survey, the actual number of individuals exposed may be underestimated, although the conservative (i.e., probably overestimated) line-kilometer distances used to calculate the area may offset this. Also, the approach assumes that no cetaceans will move away or toward the tracklines as the *Revelle* approaches in response to increasing sound levels before the levels reach 160 dB. Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in absence of a seismic program) to occur in the waters that will be exposed to greater than or equal to 160 dB (rms).

SIO's estimates of exposures to various sound levels assume that the surveys will be carried out in full; however, the ensonified areas calculated using the planned number of line-kilometers has been increased by 25% to accommodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The estimates of the numbers of marine mammals potentially exposed to 160 dB (rms) received levels are precautionary and probably overestimate the actual numbers of marine mammals that could be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Table 4 (Table 4 of the IHA application) shows the estimates of the number of different individual marine mammals anticipated to be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization is given in the far right column of Table 4 (Table 4 of the IHA application). The requested take authorization has been increased to the average mean group sizes from the surveys whose densities were used in the calculations, or from Jefferson *et al.* (2008) for species not sighted during the surveys.

The estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the survey is (with 25% contingency) in Table 4 of this document (see Table 4 of the IHA application). That total (with 25% contingency) includes 0 baleen whales, 1 sperm whale, 3 pygmy sperm whales, 5 dwarf sperm whale, 7 Cuvier's beaked whales, and 1 Blainville's beaked whales could be taken by Level B harassment during the low-energy seismic survey, which would represent 0, <0.01, NA, 0.05, 0.04, 0.01% of the regional populations, respectively. Most of the cetaceans potentially taken by Level B harassment are delphinids: bottlenose, Fraser's, pantropical spotted, and spinner dolphins as well as short-finned pilot whales are estimated to be the most common delphinid species in the area, with estimates of 118, 617, 692, 1,458, and 340, which would represent 0.07, 0.21, 0.16, 0.2, and 0.63% of the affected regional populations, respectively.

**Encouraging and Coordinating Research**

SIO and NSF will coordinate the planned marine mammal monitoring program associated with the low-energy seismic survey with other parties that express interest in this activity and area. SIO and NSF will coordinate with applicable U.S. agencies (e.g., NMFS), and will comply with their requirements.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There is subsistence hunting for sperm whales, as well as other cetaceans and dugongs in Indonesia (Reeves, 2002; Marsh *et al.,* n.d.). The hunting of Bryde's whales in the Philippines appears to be prohibited now, but dugongs are still taken there, as well as in Papua New Guinea (Marsh *et al.,* n.d.). SIO and NMFS do not expect the activities to have any impact on the availability of species or stocks of marine mammals in the study area for subsistence users that implicate MMPA section 101(a)(5)(D).

**Negligible Impact and Small Numbers Analysis Determination**

As a preliminary matter, NMFS typically includes our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, NMFS acknowledges that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and NMFS has applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document, in the notice of the proposed IHA (78 FR 33811, June 5, 2013) and based on the following factors, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death. The factors include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the implementation of the shut-down measures; and

(3) The likelihood that marine mammal detection ability by trained PSOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the SIO's planned marine seismic surveys, and none are authorized by NMFS. Table 4 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine

Mammals'' section above) in this notice, the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given NMFS's and the applicant's plan to implement mitigation, monitoring, and reporting measures to minimize impacts to marine mammals. Additionally, the seismic survey will not adversely impact marine mammal habitat.

For the other marine mammal species that may occur within the action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Additionally, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

Of the 26 marine mammal species under NMFS jurisdiction that may or are known to likely occur in the study area, five are listed as threatened or endangered under the ESA: Humpback, sei, fin, blue, and sperm whales. These species are also considered depleted under the MMPA. Of these ESA-listed species, incidental take has been requested to be authorized for humpback, sei, fin, blue, and sperm whales. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), SIO must cease or reduce airgun operations if any marine mammal enters designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, and the activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 26 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 4 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, the impact of conducting a low-energy marine seismic survey in the tropical western Pacific Ocean, September to October 2013, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the research activities, have led NMFS to determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the length of the seismic survey, the requirement to implement mitigation measures (e.g., shut-down of seismic operations), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that it will have a negligible impact on the species or stocks in the action area.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a low-energy marine seismic survey in the tropical western Pacific Ocean, September to October 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. The requested take estimates represent small numbers relative to the affected species or stock sizes (i.e., all are less than 1%). See Table 4 for the requested authorized take numbers of marine mammals.

**Endangered Species Act**

Of the species of marine mammals that may occur in the survey area, several are listed as endangered under the ESA, including the humpback, sei, fin, blue, and sperm whales. SIO did not request take of endangered North Pacific right whales due to the low likelihood of encountering this species during the cruise. Under section 7 of the ESA, NSF, on behalf of SIO, has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this low-energy seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has also initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA under section 101(a)(5)(D) of the MMPA on threatened and endangered marine mammals for this activity. These two consultations were consolidated and addressed in a single Biological Opinion addressing the direct and indirect effects of these interdependent actions. In September 2013, NMFS issued a Biological Opinion and concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of cetaceans and sea turtles and included an Incidental Take Statement (ITS) incorporating the requirements of the IHA as Terms and Conditions. The Biological Opinion also concluded that designated critical habitat of these species does not occur in the action area and would not be affected by the survey.

**National Environmental Policy Act**

With SIO's complete application, SIO and NSF provided NMFS an ''Environmental Analysis of a Low-Energy Marine Geophysical Survey by the R/V *Roger Revelle* in the Tropical Western Pacific Ocean, September–October 2013'' (Environmental Analysis), prepared by LGL Ltd., Environmental Research Associates, on behalf of SIO and NSF. The Environmental Analysis analyzes the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the ESA. NMFS, after review and evaluation of the NSF and SIO Environmental Analysis for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, prepared an independent Environmental Assessment (EA) titled ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the Scripps Institution of Oceanography to

Take Marine Mammals by Harassment Incidental to a Low-Energy Marine Geophysical Survey in the Tropical Western Pacific Ocean, September to October 2013.'' After considering the EA, the information in the IHA application, Biological Opinion, and the **Federal Register** notice, as well as public comments, NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and has prepared a Finding of No Significant Impact (FONSI). An Environmental Impact Statement is not required and will not be prepared for the action.

**Authorization**

NMFS has issued an IHA to SIO for the take, by Level B harassment, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey in the tropical western Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 13, 2013.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

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**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC874**

### Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of four Letters of Authorization.

**SUMMARY:** In accordance with regulations issued under the Marine Mammal Protection Act, as amended, we hereby give notification that we, the National Marine Fisheries Service (NMFS), have issued four 1-year Letters of Authorization (Authorizations) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to their military readiness activities associated with the routine training, testing, and military operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar within the northwest Pacific Ocean and the north-central Pacific Ocean.

**DATES:** These Authorizations are effective from August 15, 2013, through August 14, 2014.

**ADDRESSES:** Electronic copies of the Navy's May 28, 2012, LOA application letter and the LOAs are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, Office of Protected Resources, NMFS (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. We, the NMFS, have been delegated the authority to issue such regulations and Authorizations.

With respect to military readiness activities, the MMPA defines harassment as ''(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Authorization may be granted for periods of five years or less if we find that the total taking will have a negligible impact on the affected species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for certain subsistence uses. In addition, we must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the Navy's routine training, testing, and military operations of SURTASS LFA sonar are in effect through August 15, 2017 (77 FR 50290, August 20, 2012) and are codified at 50 CFR part 218 subpart X. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 20, 2012, **Federal Register** Notice and 50 CFR part 218 subpart X. Under those regulations, we must publish a notice of issuance of an Authorization or Authorization renewal in the **Federal Register** within 30 days of a determination.

**Summary of Request**

On May 28, 2013, we received an application from the Navy requesting a renewal of four Authorizations, originally issued on August 15, 2012 (77 FR 51969, August 28, 2012), for the taking of marine mammals incidental to routine training, testing, and military operations of SURTASS LFA sonar in the northwest Pacific Ocean and the north-central Pacific Ocean under the regulations issued on August 15, 2012 (77 FR 50290, August 20, 2012): one for the United States Naval Ship (USNS) VICTORIOUS (T–AGOS 19), one for the USNS ABLE (T–AGOS 20), one for the USNS EFFECTIVE (T–AGOS 21), and one for the USNS IMPECCABLE (T–AGOS 23) The application requested that these four Authorizations become effective on August 15, 2013, for a period not to exceed one year.

**Summary of Activity Under the 2012 Authorizations**

The Navy submitted quarterly mission reports for the periods of August, 2012 through May, 2013 within the required timeframes. These quarterly reports include the dates and times of the military readiness activities; location of each SURTASS LFA sonar vessel; mission operational area; marine mammal observations; and records of any delays or suspensions of sonar operations. The Navy must also report on the number of marine mammals

detected by visual, passive and active acoustic monitoring and the estimated percentage of each marine mammal stock taken by Level A and Level B harassment. The reports indicate the following:

- The Navy conducted a total of 12 missions from August 15, 2012 through May 16, 2013 in the western North Pacific Ocean which totaled 25.4 days and resulted in 47.3 hours of LFA sonar transmissions.
- The cumulative total days of SURTASS LFA operations were 97 percent below the annual levels contemplated in the Final Rule (i.e., 240 days per vessel);
- The cumulative total hours of LFA sonar transmissions were 97 percent below the levels contemplated in the Final Rule (i.e., 432 hours per vessel);
- The total percentage of each marine mammal stock taken by Level B harassment has not exceeded the 12 percent cap. For each stock, the percentage of take was well below the levels authorized in the 2012 LOAs.
- The total percentage of each marine mammal stock taken by Level A harassment has not exceeded the levels authorized in the 2012 LOAs. In fact, the Navy reported no incidences of Level A harassment takes.

The operational tempo, number of active transmission hours, marine mammal detections and behavioral observations, and level of anticipated take of marine mammals fall within the scope and nature of those contemplated by the Final Rule and authorized in the 2012 Authorizations.

**Monitoring Reports**

The Navy has submitted the monitoring reports on time as required under 50 CFR 218.236 and the 2012 Authorizations. We have reviewed these reports and determined them to be acceptable. Based on these reports, the Navy has not exceeded the average annual estimated usage of the four SURTASS LFA sonar systems and remains well within the take authorized. In accordance with the current SURTASS LFA sonar regulations (50 CFR 218.230), the Navy must submit an annual report to us no later than 45 days after the 2012 Authorizations have expired. Upon receipt, we will post the annual report at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

*Level of Taking for 2013 Authorizations Period*

For the 2013 to 2014 Authorization period, the Navy expects to conduct the same type and amount of routine training, testing, and military operations of SURTASS LFA sonar in the northwest Pacific Ocean and the north-central Pacific Ocean that they requested under the 2012 Authorizations. Similarly, the Navy expects to remain within the annual take estimates analyzed in the Final Rule. We determined that the level of taking by incidental harassment from the activities described in the Authorizations and supporting application is consistent with the findings made for the total taking allowable under the 2012 Final Rule.

*Compliance With Mitigation, Monitoring, and Reporting Measures*

Based on our review of the Navy's quarterly mission reports, the Navy complied with the required visual, passive, and acoustic monitoring measures in the Final Rule and 2012 Authorizations. The Navy also followed the required shutdown and other protocols for mitigating impacts to marine mammals while conducting operations.

The Navy is also complying with required measures under 50 CFR 218.236(d) to gain and share information on the species. The Navy reports that they are continuing to work on information transfer, declassification and archiving of ambient noise data from the Navy's Integrated Undersea Surveillance System (IUSS) to the public.

The Final Rule and 2012 Authorizations required the Navy to convene a Scientific Advisory Group (SAG) to analyze different types of monitoring and research that could increase the understanding of the potential effects of LFA sonar on beaked whales and harbor porpoises (50 CFR 218.236(e)). In August 2013, the SAG produced a preliminary final report and presented preliminary recommendations to us and the Navy regarding the feasibility, efficacy, and significance of any proposed research projects that would increase the understanding of the potential effects of LFA sonar on beaked whales and harbor porpoises. The Navy will consider the Final Report's assessments and develop, with input from us, an appropriate plan of action for potential new monitoring or research efforts, which they will present to the SAG's Executive Oversight Group (which includes representatives from NMFS) for discussion and review.

Based on the foregoing information and the Navy's application, we determined that the mitigation, monitoring, and reporting measures required under 50 CFR 218.234, .235, and .236 and NMFS' 2012 Authorizations were undertaken and will be undertaken during the period of validity of the renewed 2013 Authorizations.

**Adaptive Management**

The Final Rule and 2012 Authorizations include an adaptive management framework that allows us to consider new information and to determine (with input from the Navy regarding practicability) if modifications to mitigation and/or monitoring measures are appropriate and practicable. This framework includes a requirement for an annual meeting between us and the Navy, if either agency deems it necessary.

On June 10, 2013, we and the Navy convened an Adaptive Management meeting to review and discuss several topics, including: the Navy's mitigation monitoring results; the Navy's efforts in declassifying and transferring marine mammal monitoring data; consideration of possible additional Offshore Biologically Important Areas (OBIAs) under the criteria specified in the Final Rule; and consideration of new information that could potentially inform decisions regarding modifying existing mitigation and/or monitoring measures. Representatives from the U.S. Marine Mammal Commission were also in attendance and participated in the meeting.

**Consideration of Areas as Potential OBIAs**

We currently intend to evaluate new information relating to several areas for potential consideration as OBIAs for mysticetes and/or sperm whales before the Navy submits their 2014 renewal request for Authorizations under the Final Rule. Note that all of these areas fall outside the areas in which the Navy may operate under the 2013 Authorizations. Our evaluation will include the following areas:

- Atlantic Ocean: Southeast Shoal-Grand Banks, Canada; Grand Manan Basin Right Whale Conservation Area, Canada; Jordan Basin-Gulf of Maine, U.S.; Challenger Bank, Bermuda; and nearshore waters offshore New Jersey, U.S.
- Gulf of Mexico: areas in the eastern Gulf of Mexico, U.S.; Mississippi and DeSoto Canyons, U.S.
- Indian Ocean: Masira Bay, Oman and the Geyser-Zelee Complex, Madagascar.
- North Sea: Dogger Bank, Germany.
- Mediterranean Sea: central Tyrrhenian Sea and areas in the northern Mediterranean Sea.
- Pacific Ocean: South Taranaki Bight, New Zealand; the Coral Sea

Commonwealth Marine Reserve, Australia; and the proposed expanded areas of the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, U.S.

Additionally, as a result of issues raised in the course of litigation challenging our 2012 Final Rule, we re-evaluated 15 previously analyzed areas that we had determined did not qualify for OBIA designation. None of these areas is located within the Navy's mission areas for the 2013 Authorizations. As a result of the re-evaluation and consideration of the best scientific evidence currently available, we reaffirmed our determination that 14 of the 15 areas are not eligible as an OBIA because they do not meet either the geographic or biological criteria for designation specified in the Final Rule. The remaining area, the Grand Manan Basin Right Whale Conservation Area in the northwest Atlantic Ocean, merits additional consideration based on subsequently-acquired information and appears in the above list. However, the Navy will not operate SURTASS LFA sonar in the northwest Atlantic Ocean within the timeframes of the 2013–2014 Authorizations. We will evaluate this area further as a potential OBIA with input from the Navy regarding practicability, as necessary through the adaptive management process, for the Navy's 2014 Authorization requests.

None of the information considered or discussed before, during, or since the 2013 Adaptive Management Meeting, including consideration of issues raised in the ongoing litigation, led us to recommend any modifications to the existing mitigation or monitoring measures at this time, although we are still considering whether some other areas located outside of the Navy's current operational area in the Pacific Ocean qualify as OBIAs under the criteria specified in the Final Rule. Throughout the effective period of the Final Rule, we will consider and discuss with the Navy any relevant new information as it arises related to areas that may qualify as potential OBIAs or any other mitigation for SURTASS LFA sonar.

**Authorization**

We have issued four Letters of Authorization to the Navy, authorizing the incidental harassment of marine mammals, incidental to operating the four SURTASS LFA sonar systems for routine training, testing and use during military operations. Issuance of these four Authorizations is based on findings, described in the preamble to the final rule (77 FR 50290, August 20, 2012) and supported by information contained in the Navy's required reports on SURTASS LFA sonar and their application, that the activities described under these four Authorizations will have no more than a negligible impact on marine mammal species or stocks and will not have an unmitigable adverse impact on their availability for taking for subsistence uses.

These Authorizations remain valid through August 15, 2014, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 218.230 through 218.241 (77 FR 50290, August 20, 2012) and in the LOAs are undertaken.

Dated: September 13, 2013.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–22678 Filed 9–17–13; 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 October 22, 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 *BWashington@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 on the progress of the following *new* subcommittees established to help the NTIA develop new or revised strategies for responding more efficiently and effectively to fundamental technological, operational, and other trends to continue advancement of delivering spectrum products, services, and solutions that will support the ever-increasing demand for spectrum:

1. Enforcement
2. Transitional Sharing
3. General Occupancy Measurements and Quantification of Federal Spectrum Use
4. Spectrum Management Via Databases
5. Federal Access to Non-Federal Bands
6. Spectrum Sharing Cost Recovery Alternatives

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 October 22, 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 *BWashington@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.*

Dated: September 13, 2013.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2013–22682 Filed 9–17–13; 8:45 am]

**BILLING CODE 3510–60–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Ocean Research Advisory Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Ocean Research Advisory Panel will hold a regularly scheduled meeting. The meeting will be open to the public.

**DATES:** The meeting will be held on Monday, October 7, 2013 from 10:00 a.m. to 12:00 p.m. Members of the public should submit their comments in advance of the meeting to the meeting Point of Contact.

**ADDRESSES:** The meeting will be held at QinetiQ-North America, 4100 Fairfax Drive, Suite 800, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joan S. Cleveland, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone 703–696–4532.

**SUPPLEMENTARY INFORMATION:** This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research, resource management, and other current issues in the ocean science and management communities.

Dated: September 11, 2013.

**N.A. Hagerty-Ford,**

*Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2013–22684 Filed 9–17–13; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2013–ICCD–0125]**

### Agency Information Collection Activities; Comment Request; Student Aid Internet Gateway (SAIG) Enrollment Document

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 18, 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–0125 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 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or 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:* Student Aid Internet Gateway (SAIG) Enrollment Document.

*OMB Control Number:* 1845–0002.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* Private Sector, State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 33,140.

*Total Estimated Number of Annual Burden Hours:* 10,128.

*Abstract:* Enrollment in the Federal Student Aid (FSA) Student Aid Internet Gateway (SAIG) allows eligible entities to securely exchange Title IV, Higher Education Act (HEA) assistance programs data electronically with the Department of Education processors. Organizations establish Destination Point Administrators (DPAs) to transmit, receive, view and update student financial aid records using telecommunication software. Eligible respondents include the following, but are not limited to, institutions of higher education that participate in Title IV, HEA assistance programs, third-party servicers of eligible institutions, Guaranty Agencies, Federal Family Education Loan Program (FFELP) lenders, Federal Loan Servicers, local educational agencies (LEAs). The Enrollment Form for Post-Secondary Schools and Servicers represents the full complement of questions that must be presented for an organization enrolling in SAIG. The Enrollment Form for State Grant Agencies and the Enrollment Form for tracking Free Application for Federal Student Aid (FAFSA) Completion for Local Educational Agencies (LEAs) are a subset of selected questions (from the full complement of questions) to streamline the form for ease of use. The SAIG Application for State Grant Agencies Form was revised to create a two-part form. The first part is the SAIG Enrollment application and the second part is the new Participation Agreement which establishes the conditions under which the Department will permit the disclosure of certain data received or generated by the Department concerning FSA applicants. The Institutions, Third-Party Servicers, Guaranty Agencies, Federal Loan Servicers, Lenders Enrollment Form was revised to allow Lenders and their Servicers to enroll for COD Online access in order to receive completed electronic IBR/Pay As You Earn/ICR Repayment Request. Additionally, all forms were revised to accommodate annual rollover changes (i.e. new award years).

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–22698 Filed 9–17–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

**[Docket No. PP–371]**

### Northern Pass Transmission Line Project Environmental Impact Statement: Announcement of Change in Public Meeting Location

**AGENCY:** Department of Energy.

**ACTION:** Announcement of change in public meeting location.

**SUMMARY:** On September 6, 2013, the U.S. Department of Energy (DOE) published in the **Federal Register** an amended Notice of Intent (NOI) to modify the scope of the Northern Pass Transmission Line Project Environmental Impact Statement (EIS) (DOE/EIS–0463) and to conduct additional public scoping meetings (78 FR 54876). In that amended NOI, DOE announced four public meetings, including one on September 26 in West Stewartstown, NH. In response to public requests that raised concerns about insufficient capacity at the Stewartstown venue, DOE has since changed the location of the September 26 public meeting to Colebrook Elementary School, 27 Dumont Street, Colebrook, NH. The public scoping meeting will be from 5–8 p.m. DOE previously announced this change in public meeting location on both the Northern Pass EIS Web site at *http://www.northernpasseis.us* on September 10, 2013, notified persons who have subscribed to the email list of this change via email on September 10, 2013, and the DOE NEPA Web site at *http://energy.gov/nepa* on September 11, 2013.

**DATES:** DOE will conduct four public scoping meetings prior to the close of the public scoping period on November 5, 2013. The public scoping meetings will be held in:

1. Concord, NH, Grappone Conference Center, 70 Constitution Avenue, Monday, September 23, 2013, 6–9 p.m.;

2. Plymouth, NH, Plymouth State University, Silver Center for the Arts, Hanaway Theater, 17 High Street, Tuesday, September 24, 2013, 5–8 p.m.;

3. Whitefield, NH, Mountain View Grand Resort & Spa, Presidential Room, 101 Mountain View Road, Wednesday, September 25, 2013, 5–8 p.m.; and

4. Colebrook, NH, Colebrook Elementary School, 27 Dumont Street, Thursday, September 26, 2013, 5–8 p.m.

Requests to speak at one or more public scoping meeting(s) should be received at the address for Brian Mills indicated below in the **ADDRESSES** section by September 18, 2013; requests received by that date will be given priority in the speaking order. However, requests to speak also may be made at the scoping meeting.

If assistance is needed to participate in any of the DOE scoping meetings (e.g., qualified interpreter, computer-aided real-time transcription), please submit a request for auxiliary aids and services to DOE by September 16, 2013 by contacting Brian Mills as described below in the **ADDRESSES** section.

**ADDRESSES:** Requests to speak at a public scoping meeting(s), and requests for individuals to be added to the document mailing list (to receive a paper or electronic copy of the Draft EIS) should be addressed to: Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; by email to *Brian.Mills@hq.doe.gov*; or by facsimile to 202–586–8008. Additional information on the Northern Pass Transmission Line Project EIS is available on the EIS Web site at *http://www.northernpasseis.us.*

For general information on the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; by email at *askNEPA@hq.doe.gov*; at 202–586–4600, or 800–472–2756; or by facsimile at 202–586–7031. Additional information on DOE's NEPA program is available on the DOE NEPA Web site at *http://energy.gov/nepa.*

Issued in Washington, DC, on September 12, 2013.

**Brian Mills,**

*Senior Planning Advisor, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2013–22687 Filed 9–17–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of document availability.

**SUMMARY:** Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services,

including construction, are available in printed form or at the following Internet address: *http://www.bpa.gov/corporate/business/bpi.*

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form or available at the following Internet address: *http://www.bpa.gov/corporate/business/bfai.*

**ADDRESSES:** Unbound copies of the BPI or BFAI may be obtained by sending a request to the Head of the Contracting Activity, Routing DGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

**FOR FURTHER INFORMATION CONTACT:** Head of Contracting Activity (503) 230–5498.

**SUPPLEMENTARY INFORMATION:** BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 et seq. and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 et seq. and 16 U.S.C. 839 et seq. The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following Federal Regulations and/or OMB circulars:

2 CFR Part 220 Cost Principles for Educational Institutions (Circular A–21);

2 CFR Part 225 Cost Principles for State, Local and Indian Tribal Governments (Circular A–87);

Grants and Cooperative Agreements with State and Local Governments (Circular A–102);

Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (Circular A–110);

2 CFR Part 230 Cost Principles for Non-Profit Organizations (Circular A–122); and

Audits of States, Local Governments and Non-Profit Organizations (Circular A–133).

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information for offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 10, 2013.

**Damian J. Kelly,**

*Manager, Purchasing/Property Governance.*

[FR Doc. 2013–22677 Filed 9–17–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2376–048]**

### Appalachian Power Company; Notice of Application To Increase Water Withdraw and Construct Water Withdraw Facilty Pursuant to License Article 202 and Soliciting Comments, Motions To Intervene, Protests, and Recommendations

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (Commission) and is available for public inspection:

a. *Application Type:* License amendment pursuant to article 202.

b. *Project No:* 2376–048.

c. *Date Filed:* July 31, 2013.

d. *Applicant:* Appalachian Power Company (licensee).

e. *Name of Project:* Reusens Hydroelectric Project.

f. *Location:* The Reusens Project is located on the James River near the town of Lynchburg, in Amherst and Bedford Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Frank M. Simms, Hydro Supervisor—Plant Manager II, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011. Phone 540–985–2875.

i. *FERC Contact:* Mr. Robert Ballantine at 202–502–6289, *robert.ballantine@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations: October 14, 2013.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2376–048) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* Appalachian Power Company, licensee for the Reusens Hydroelectric Project, requests the Commission to amend license article 202 and the Commission's December 3, 2010, order approving non-project use of project waters. The Commission's December 3, 2010 order, authorizes the licensee to allow Amherst County Service Authority (ACSA) to install and operate a temporary water withdraw facility with a 2 million gallons per day (MGD) withdraw limit. The licensee is requesting the Commission grant it non-project use of project lands and waters for the ACSA to construct permanent water withdraw facilities within the project boundary and to increase the water withdraw limit from 2 MGD to a maximum of 3 MGD.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, Protests, and Recommendations:* Anyone may submit comments, motion to intervene, protests, or

recommendations in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all comments, protests, or recommendations filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, protests, or recommendations must be received on or before the specified comment date for the particular application (October 14, 2013).

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', ''RECOMMENDATIONS'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests, recommendations, or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–22694 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–1320–000.

*Applicants:* Transcontinental Gas Pipe Line Company.

*Description:* LNG Truck Service to be effective 11/1/2013.

*Filed Date:* 9/10/13.

*Accession Number:* 20130910–5055.

*Comments Due:* 5 p.m. ET 9/23/13.

*Docket Numbers:* RP13–1321–000.

*Applicants:* Mississippi Hub, LLC.

*Description:* Annual Penalty Disbursement Report of Mississippi Hub, LLC.

*Filed Date:* 9/10/13.

*Accession Number:* 20130910–5111.

*Comments Due:* 5 p.m. ET 9/23/13.

*Docket Numbers:* RP13–1322–000.

*Applicants:* Kinetica Energy Express, LLC.

*Description:* Kinetica Energy Express, LLC submits tariff filing per 154.203: Kinetica Energy Express LLC—FERC Gas Tariff—Volume 1 A Baseline Filing to be effective 9/1/2013.

*Filed Date:* 9/10/13.

*Accession Number:* 20130910–5160.

*Comments Due:* 5 p.m. ET 9/23/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 11, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22654 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL13–88–000]**

## Northern Indiana Public Service Company v. Midcontinent Independent System Operator, Inc., PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on September 11, 2013, pursuant to section 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825c, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2013), Northern Indiana Public Service Company (Complainant) filed a formal complaint against Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM) (collectively, Respondents), requesting that the Commission direct the Respondents to make modifications to the transmission planning provisions of Section 9 of the MISO–PJM Joint Operating Agreement.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the

Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on October 1, 2013.

Dated: September 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–22693 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–1931–000]**

### South Jersey Energy ISO3, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of South Jersey Energy ISO3, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is September 23, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22670 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5679–033]**

### Toutant Hydro Power, Inc.; Energy System, LLC.; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On September 6, 2013, Toutant Hydro Power, Inc. (transferor) and Energy System, LLC (transferee) filed an application for transfer of license for the M.S.C. Power Project, FERC No. 5679, located on the Quinebaug River in Windham County, Connecticut.

Applicants seek Commission approval to transfer the license for the M.S.C. Power Project from transferor to transferee.

Applicants' Contact: For Transferor: Mr. Roland Toutant, Vice President, Toutant Hydro Power, Incorporated, 80 Bungay Hill Road, Woodstock, CT 06281, telephone (860) 234–4032. For Transferee: Mr. Rolland Zeleny, President, Energy Stream, LLC, 18 Washington Street, Suite 18, Canton, MA 02021, telephone (603) 498–8089.

*FERC Contact:* Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–5679) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: September 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–22695 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** September 19, 2013 10:00 a.m.

**PLACE:** Room 2C, 888 First Street NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

997TH-MEETING, REGULAR MEETING

[September 19, 2013, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **Administrative** | |
| A–1 | AD02–1–000 | Agency Business Matters. |
| A–2 | AD02–7–000 | Customer Matters, Reliability, Security and Market Operations. |
| A–3 | AD12–12–000 | Coordination Between Natural Gas and Electricity Markets. |
| | **Electric** | |
| E–1 | ER12–1179–003 | Southwest Power Pool, Inc. |
| | ER12–1179–004 | |
| | ER12–1179–005 | |
| | ER13–1173–000 | |
| E–2 | OMITTED | |
| E–3 | OMITTED | |
| E–4 | RM12–16–000 | Generator Requirements at the Transmission Interface. |
| E–5 | RM13–16–000 | Generator Verification Reliability Standards. |
| E–6 | RM10–11–002 | Integration of Variable Energy Resources. |
| E–7 | ER11–2814–000 | PJM Interconnection, L.L.C. |
| | ER11–2814–001 | |
| | ER11–2815–001 | |
| | ER11–2815–002 | |
| | ER11–2815–004 | |
| E–8 | ER11–2814–000 | PJM Interconnection, L.L.C. |
| | ER11–2814–001 | |
| | ER11–2815–000 | |
| | ER11–2815–001 | |
| | ER11–2815–002 | |
| | ER11–2815–004 | |
| | ER11–3279–000 | Midwest Independent Transmission System Operator, Inc. |
| | ER11–3279–001 | |
| E–9 | ER12–91–000 | PJM Interconnection, L.L.C. |
| | ER12–91–002 | Duke Energy Ohio, Inc., and |
| | ER12–91–005 | Duke Energy Kentucky, Inc. |
| | ER12–92–000 | |
| | ER12–92–002 | |
| | ER12–92–005 | |
| E–10 | OMITTED | |
| E–11 | ER13–2031–000 | Southwest Power Pool, Inc. |
| | ER13–2033–000 | |
| E–12 | ER12–2292–001 | Southwest Power Pool, Inc. |
| | ER12–2292–002 | |
| | ER12–2292–003 | |
| | ER13–1123–000 | |
| | **Gas** | |
| G–1 | RP12–813–002 | Gulf South Pipeline Company, LP. |
| | RP12–813–001 | |
| G–2 | RP13–423–002 | Rockies Express Pipeline LLC. |
| | RP12–765–002 | |
| | **Hydro** | |
| H–1 | P–2149–160 | Public Utility District No. 1 of Douglas County, Washington. |
| H–2 | P–2114–261 | Public Utility District No. 2 of Grant County, Washington. |
| H–3 | P–2197–103 | Alcoa Power Generating Inc. |
| H–4 | P–2790–059 | Boott Hydropower, Inc., and Eldred L. Field Hydroelectric Facility Trust. |
| H–5 | P–2216–081 | New York Power Authority. |
| H–6 | P–2232–598 | Duke Energy Carolinas, LLC. |
| | **Certificates** | |
| C–1 | CP06–407–008 | Missouri Interstate Gas, LLC. |
| | | Missouri Gas Company, LLC. |
| | | Missouri Pipeline Company, LLC. |
| C–2 | CP13–3–000 | Tennessee Gas Pipeline Company, L.L.C. |

Issued September 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2013–22777 Filed 9–16–13; 11:15 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14553–000]**

### Mid-Atlantic Hydro, LLC; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On August 30, 2013, Mid-Atlantic Hydro, LLC (MAH) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Dashields Lock and Dam Hydroelectric Project (Dashields Project or project) to be located at the U.S. Army Corps of Engineers' Dashields Lock and Dam on the Ohio River in Allegheny County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

MAH's permit application is filed in competition with FFP Project 133, LLC's proposed Dashields Lock and Dam Hydroelectric Project No. 14524–000, which was publicly noticed July 3, 2013. The deadline for filing competing applications was September 1, 2013. MAH's competing permit application is timely filed.

The proposed project would consist of the following: (1) A new powerhouse located adjacent to the right descending bank immediately downstream of a 350-linear-foot section of the existing dam; (2) fourteen Very Low Head (VLH) 4000 turbine units with a total capacity of 7 megawatts; (3) a permanent submersible magnet generator housed in each turbine hub; and (4) a new 69-kilovolt transmission line approximately 2.1 miles long. The estimated annual generation of the Dashields Project would be 41.4 gigawatt-hours.

*Applicant Contact:* Kristina Johnson, Mid-Atlantic Hydro, LLC, 5425 Wisconsin Avenue, Suite 600, Chevy Chase, MD 20815; phone: (301) 718–4432.

*FERC Contact:* Woohee Choi; phone: (202) 502–6336.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14553–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14553) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–22697 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14493–000]**

### KC Pittsfield LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 1, 2013, KC Pittsfield LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Drum-Spaulding Small Hydro Project (Drum-Spaulding Small Hydro Project or project) to be located on the Bear and American Rivers, near the city of Auburn, Placer County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would use facilities that are part of Pacific Gas & Electric Company's (PG&E) Drum-Spaulding Project, FERC No. 2310. The proposed project would consist of two new development sites and a proposed re-commission of an existing powerhouse.

KC Pittsfield's Lake Valley Canal development, located at the drop between the Lake Valley canal and the Drum canal, would consist of: (1) The 8,400-foot-long Lake Valley canal; (2) an existing 30-inch-diameter, 2,100-foot-long pipeline serving as a penstock; (3) a new powerhouse containing a single Pelton type turbine generator rated at 1,300 kilowatts; and (4) approximately 800 feet of a new three-phase power line that will follow an existing PG&E road, and an upgrade of 1,600 feet of existing transmission line from single-phase to three-phase. KC Pittsfield's proposed development would have an average annual generation of 4 gigawatt-hours.

KC Pittsfield's proposed Bear-Halsey Canal Drop development would consist of: (1) An existing 30-foot drop at the end of the Bear River canal into the Halsey forebay; (2) a new powerhouse enclosing a propeller or bulb-type turbine generator rated at 800 kilowatts, located at the terminus of the Bear River canal discharge to the Halsey forebay; and (3) approximately 200 feet of new three-phase power line and the upgrade of approximately 1,400 feet of single-phase line to three-phase line. This

proposed development would have an annual average generation of about 5 gigawatt-hours.

KC Pittsfield's proposed Alta Powerhouse development would consist of using PG&E's existing Unit 2 impulse turbine in the Alta Powerhouse of the Drum-Spaulding Project with an installed capacity of one megawatt or installing a new, smaller turbine. The Alta Powerhouse receives water from the Alta forebay via the Towle canal, which diverts water from Canyon Creek. Water discharged from the Alta Powerhouse is rediverted into the Placer County Water Agency's Lower Boardman canal for downstream consumptive water demands. This proposed development would have an average annual generation of 0.03 gigawatt-hours.

The project would require interconnection with existing PG&E transmission facilities. The proposed project would have a total installed capacity of 3.1 megawatts and generate a total estimated average annual energy production of 12 gigawatt-hours.

*Applicant Contact:* Ms. Kelly Sackheim, KC Pittsfield LLC, c/o Landry & Associates, 6 Chenell Drive, Suite 280, Concord, New Hampshire 03301, phone: (301) 401–5978.

*FERC Contact:* Joseph Hassell; phone: (202) 502–8079, email: *Joseph.hassell@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14493–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14493) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 12, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–22696 Filed 9–17–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2013–0667; FRL–9901–14–OECA]**

## Proposed Information Collection Request; Comment Request; Annual Public Water System Compliance Report

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Annual Public Water System Compliance Report'' (EPA ICR No. 1812.05, OMB Control No. 2020–2020) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through 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.

**DATES:** Comments must be submitted on or before November 18, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2013–0667, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Joyce Chandler, Monitoring, Assistance and Media Programs Division, Office of Compliance, MC–2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–7073; fax number: (202) 564–0050; email address: *chandler.joyce@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting 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. 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. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Docket ID Number:* EPA–HQ–OECA–2013–0667; *Title:* Annual Public Water Systems Compliance Report; *ICR Numbers:* EPA ICR Number 1812.05, OMB Control Number 2020–2020; *ICR Status:* This ICR is scheduled to expire on March 31, 2014.

*Abstract:* Section 1414(c)(3)(A) of the Safe Drinking Water Act (SDWA)

requires that each state (a term that includes states, commonwealths, tribes and territories) that has primary enforcement authority under the SDWA shall prepare, make readily available to the public, and submit to the Administrator of EPA, an annual report of violations of national primary drinking water regulations in the state. These Annual State Public Water System Compliance Reports are to include violations of maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with the states. To minimize a state's burden in preparing its annual statutorily-required report, EPA issued guidance that explains what Section 1414(c)(3)(A) requires and provides model language and reporting templates. EPA also annually makes available to the states a computer query that generates for each state (from information states are already separately required to submit to EPA's national database on a quarterly basis) the required violations information in a table consistent with the reporting template in EPA's guidance.

*Form Numbers:* None.

*Respondents/affected Entities:* Entities potentially affected by this action are States that have primacy enforcement authority and meet the definition of ''state'' under the SDWA.

*Respondent's Obligation To Respond:* mandatory (Section 1414 1414(c)(3)(A) of the SDWA)

*Estimated Number of Respondents:* 55 (total).

*Frequency of Response:* Annually.

*Total Estimated Burden:* 4,400 hours hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total Estimated Cost:* $232,303 (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The universe of respondents remains the same.

Dated: September 10, 2013.

**Sherry Sterling,**

*Acting Director, Office of Compliance.*

[FR Doc. 2013–22746 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2013–0611; FRL–9398–5]**

## Cancellation of Pesticides for Non-Payment of Year 2013 Registration Maintenance Fees

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Since the amendments of October 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15, 2013, has gone unpaid for 220 registrations. Section 4(i)(5)(G) of FIFRA provides that the EPA Administrator may cancel these registrations by order and without a hearing; orders to cancel all 220 of these registrations have been issued within the past few days.

**DATES:** A cancellation is effective on the date the cancellation order is signed.

**FOR FURTHER INFORMATION CONTACT:** Michael Yanchulis, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0237; email address: *yanchulis.michael@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2013–0611. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

### II. Background

Section 4(i)(5) of FIFRA, as amended in October 1988 (Pub. L. 100–532), December 1991 (Pub. L. 102–237), and again in August 1996 (Pub. L. 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under FIFRA section 3 as well as those granted under FIFRA section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the EPA Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 226 minor agricultural use registrations at the request of the registrants.

In fiscal year 2013, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Renewal Act (PRIRA) was passed by Congress in October 2007. PRIRA authorized the Agency to collect $27.8 million dollars in maintenance fees in fiscal year 2012. In late 2012, all holders of either FIFRA section 3 registrations or FIFRA section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in March, 2013, to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices of intent to cancel, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for 15,804 FIFRA section 3 registrations, or about 97% of the registrations on file in December 2012. Fees have been paid for 1,941 FIFRA section 24(c) registrations,

or about 86% of the total on file in December 2012. Cancellations for non-payment of the maintenance fee affect 196 FIFRA section 3 registrations and 24 FIFRA section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2014, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through special reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

## III. Listing of Registrations Canceled for Non-Payment

Table 1 of this unit lists all of the FIFRA section 24(c) registrations, and Table 2 of this unit lists all of the FIFRA section 3 registrations which were canceled for non-payment of the 2013 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

| SLN No. | Product name |
|---|---|
| AR–08–0005 ..... | Superwham! (alternate Name for Wham! EZ) |
| AR–08–0006 ..... | Riceshot |
| AR–08–0007 ..... | Ricepro |
| AR–08–0008 ..... | Duet |
| AR–08–0009 ..... | Superwham! (alternate Name for Wham! EZ) |
| AR–08–0013 ..... | Ricebeaux |
| AR–12–0001 ..... | Ricebeaux Herbicide |
| AR–12–0002 ..... | Ricebeaux |
| AR–12–0003 ..... | Ricepro |
| AR–12–0006 ..... | Ricebeaux |
| AR–12–0007 ..... | Wham! EZ |
| CA–08–0007 ..... | Plantshield HC Biological Fungicide |
| CA–11–0003 ..... | Temik Brand 15G Aldicarb Pesticide |
| CA–87–0038 ..... | Griffin Direx 4L Herbicide |
| CA–97–0022 ..... | Elite 45 DF Foliar Fungicide |
| ID–03–0015 ..... | Pyristar Microencapsulated Insecticide Seed Treatment |
| ID–07–0007 ..... | Honcho Plus |
| MN–07–0006 .... | Chem Sect Brand Chem Fish Synergized |
| MS–05–0011 .... | Meychem Glyphosate Herbicide (ABN Wise Up Plus Glyphosate Herbicide) |
| MT–12–0001 .... | Sun Pac Mildewcide |
| OH–02–0004 .... | Slimicide C–74 |
| OR–05–0013 .... | Honcho Plus Herbicide |
| TX–10–0020 ..... | Kaput Combo Bait Mini Blocks for Rodents & Fleas |
| WA–07–0010 .... | Pear Wrap Treated with Ethoxyquin |

| Registration No. | Product name |
|---|---|
| 000577–00541 .. | Cuprinol Wood Preservative Green No. 10 |
| 000577–00549 .. | Pro-Line 1080–H Hard Vinyl Antifouling Paint |
| 000577–00560 .. | Sherwin-Williams Seaguard Hard Vinyl Anti-Foulant |
| 000655–00802 .. | Prentox Larva-Lur contains Propoxur |
| 000675–00019 .. | Bulk Amphyl Brand Disinfectant |
| 000675–00043 .. | Amphyl |
| 000706–00105 .. | Multi-Use Insecticide Fogger |
| 000777–00068 .. | Lysol Brand Pre-Moistened Touch-Ups Disinfecting Cleaning Wipes |
| 000829–00268 .. | SA–50 Brand Atrazine 4L Herbicide |
| 001043–00115 .. | Process Vesphene II ST |
| 001043–00121 .. | GW002 Tertiary Blend |
| 001124–00057 .. | Brillo Pinosan |
| 001769–00188 .. | Acti-Cil Weed Killer |
| 001769–00380 .. | OWT–908 Microbiocide |
| 002382–00124 .. | Preventic L.A. IGR |
| 002382–00132 .. | Flypel |
| 002382–00155 .. | Permethrin-Pyriproxyfen Residual Shampoo for Dogs #1 |
| 002596–00136 .. | Hartz 2 In 1 Flea & Tick Spray for Cats and Dogs |
| 002686–00017 .. | Sodium Hypochlorite 10% |
| 002749–00542 .. | Trifluralin 4 E.C. Herbicide |
| 002749–00546 .. | Aceto Clethodim 2 EC |
| 002749–00547 .. | Butoxone 200 Herbicide |
| 002749–00548 .. | Butoxone SB |
| 002749–00549 .. | Butoxone Herbicide |
| 002749–00550 .. | Butoxone 7500 Herbicide |
| 003090–00224 .. | Sanitized Brand TH 22–27 DM |
| 003377–00020 .. | Bromine Chloride Disinfectant |

| Registration No. | Product name |
|---|---|
| 004091–00013 .. | Marquat 72 MUP |
| 004462–00058 .. | Q-Cide |
| 005473–00005 .. | Tri-San Sanitizer |
| 007138–00015 .. | Carpetmaker X–X–X with 0.85 Pendimethalin |
| 007138–00016 .. | Carpetmaker with 1.30% Pendimethalin Pre-Emergence Crabgrass and Broad |
| 007138–00024 .. | XX–X–X Lawn Food with 0.069% Bifenthrin Insecticide |
| 007405–00051 .. | Chemi-Cap Hosp-I-Septic G Surface Disinfectant Deodorant |
| 007546–00006 .. | Shurguard |
| 008284–00006 .. | Bissell Disinfectant Spray |
| 008284–00007 .. | Bissell Disinfectant Bathroom Cleaner |
| 010118–00001 .. | Whizzer Mat Cleaner & Disinfectant |
| 010308–00031 .. | Deckmate Mosquito Repellent |
| 010330–00020 .. | Carbon Dioxide |
| 010707–00003 .. | Magnacide 407 |
| 010707–00025 .. | Magnacide G100 |
| 010707–00026 .. | Magnacide G 100 W |
| 010707–00029 .. | Magnacide G113 |
| 010707–00049 .. | X-Cide 380 Industrial Bactericide |
| 010707–00052 .. | X-Cide 5009 Industrial Bactericide |
| 010772–00005 .. | Sno Bol Toilet Bowl Cleaner |
| 010807–00443 .. | Time-Mist Metered Insecticide II |
| 010807–00445 .. | Purge After Hours Plus Ds |
| 011623–00044 .. | Total Release Fogger III |
| 011623–00048 .. | Apollo Contact Insecticide |
| 021165–00062 .. | Pyranha 1–10 SBA Concentrate |
| 033560–00043 .. | Bareground 21 |
| 035512–00049 .. | Turf Pride Fertilizer with 2% Sevin Brand Carbaryl Insecticide |
| 035512–00055 .. | Turf Pride Fertilizer with 0.055% Bifenthrin Insecticide |
| 035512–00058 .. | Turf Pride Fertilizer with 0.50% Ronstar |
| 035512–00059 .. | Turf Pride Fertilizer + 0.70% Preemergent Weed Control |
| 036029–00014 .. | Strychnine Alkaloid N.F. |
| 036029–00016 .. | Wilco Pocket Gopher Milo Bait for Hand Baiting |
| 036029–00025 .. | Wilco Gopher Getter Restricted Use Bait |
| 038871–00001 .. | Copper Carbonate—Dry |
| 038871–00002 .. | Copper Carbonate—Wet |
| 039959–00001 .. | A–106 |
| 039959–00002 .. | 7618 |
| 039959–00003 .. | 7619 |
| 040391–00003 .. | Entech Fog-5 |
| 040510–00003 .. | Water Purification Tablets, Iodine 50 |
| 041954–00014 .. | JM Cal Hypo-TSP |
| 042177–00009 .. | Olympic Algaecide 20 |
| 042177–00077 .. | Ez-Clor Litho Shock |
| 043813–00023 .. | Evipol 360SL |
| 043813–00024 .. | Evipol Technical |
| 043813–00029 .. | Xamox Technical |
| 043813–00030 .. | Xamox 3OL |
| 043813–00031 .. | Xamox 10TK |
| 043813–00036 .. | Xamox 100 SL |
| 043889–00001 .. | Capsyn |
| 045987–00001 .. | Doo-Not Dog & Cat Repellent |
| 046043–00019 .. | T.I.C.A. Technical Tablets 1'' |
| 046043–00021 .. | T.I.C.A. Technical Sticks |
| 046043–00022 .. | Granular S.D.I.C. 56 |
| 046043–00028 .. | Sodium Bromide Technical |
| 046043–00031 .. | Suncoast's Pool Algaecide 20 |
| 046043–20005 .. | Suncoast Swimming Pool Chlorinating Shock |
| 046620–00001 .. | Requat Antimicrobial 1977 Liquid |
| 046781–00010 .. | Premicide |
| 046923–00010 .. | OBC Copper Complex NH3 |
| 048302–00008 .. | TFA—10 LA |
| 048302–00013 .. | Sea Grand Prix 500-Us Part B Antifouling Paint Component |
| 048520–00011 .. | Phoenix Tiny Tabs |
| 048520–00016 .. | Poly-50 Algaecide |
| 049403–00036 .. | JMAC LP10A |
| 049517–00003 .. | Moore Ag Brand Poly-Foliant V Defoliant-Desiccant |
| 049547–00014 .. | Antibacterial Festival All Purpose Cleaner |
| 051624–20001 .. | AQB–035 Algae Control |
| 051978–00001 .. | Bale Champ |
| 052991–00001 .. | Bedoukian OFM Technical Pheromone |
| 053257–20004 .. | Sodium Hypochlorite Solution 5.25% |
| 053575–00019 .. | Isomate-M 100 |
| 053575–00028 .. | Isomate-OMLR |
| 054705–00011 .. | Weed Stopper Hose'em |

| Registration No. | Product name |
|---|---|
| 055364–00007 .. | Control III Elite |
| 056336–00003 .. | Checkmate (R) OFM |
| 056336–00004 .. | Checkmate CM Technical Pheromone |
| 056336–00005 .. | Checkmate CM Hand Applied Dispenser |
| 056336–00008 .. | Surefire Japanese Beetle Trap |
| 056336–00011 .. | Consep SPR3 Codling Moth Pheromone Sprayable |
| 056336–00020 .. | Checkmate PTB–XL |
| 056336–00023 .. | Consep SPR4M Peach Twig Borer Sprayable Bead Pheromone |
| 056362–00003 .. | Towerchlor 12.5 |
| 058007–00010 .. | Ultrathon Insect Repellent Wipes |
| 058295–00001 .. | Barnebey & Sutcliffe Type 989 Bacteriostatic Water Filter Media |
| 060063–00039 .. | Myclobutanil 2% Homeowner Fungicide |
| 062498–00001 .. | Pool Pride Granular 62 |
| 064014–00009 .. | Harpoon |
| 066617–00001 .. | Island Marketing's Bugchaser Brand Insect Repellent Wristband Strip |
| 066784–00003 .. | Timsen Bar Sanitizer |
| 067517–00014 .. | Disinfectant |
| 067517–00020 .. | Iodine Concentrate 3.5 |
| 068109–00001 .. | Sodium Hypochlorite Solution |
| 068329–00017 .. | Alpha 418 |
| 068476–00001 .. | Bugg-Less |
| 068543–00037 .. | Bengal Pyrethrins Roach Spray |
| 068543–00039 .. | Bengal Home Insect Killer |
| 069151–00005 .. | Steritech-D |
| 069361–00021 .. | Tebucon 2.9 EW |
| 070305–00001 .. | Para Mothballs |
| 070369–00002 .. | Raycide |
| 071058–00001 .. | Triap 4HF |
| 071532–00027 .. | Lambdastar 1CS–PCO |
| 071532–00030 .. | Esfenvalerate 3.5% EC |
| 071532–00031 .. | Esfenvalerate 3.5% CS–PCO |
| 071661–00001 .. | Surfacine(R) All Purpose Cleaner |
| 071695–00001 .. | CS–100 Acid Anionic Sanitizer |
| 071871–00003 .. | Sterrad Hydrogen Peroxide |
| 072138–00006 .. | Softpine |
| 072138–00008 .. | White Cap 15% Pine Oil Cleaner/Disinfectant |
| 072244–00001 .. | Holiday Fire Ant Killer E. C. |
| 072468–00003 .. | PMC 360 |
| 072468–00005 .. | Mold Wipes 360 |
| 072675–00001 .. | Sanisorbx |
| 072679–00004 .. | Copper Paint No.2 Green |
| 072956–00002 .. | Sanitizer Product |
| 072977–00002 .. | Axen |
| 073232–00003 .. | Smart-San D2 |
| 073354–00001 .. | RRSI Amine 2,4–D |
| 073354–00002 .. | RRSI Dicamba-D |
| 073354–00003 .. | RRSI LV–6 |
| 073499–00001 .. | ASAP–AGX |
| 073499–00002 .. | ASAP–AGX–32 |
| 073612–00001 .. | Sentry |
| 074062–00002 .. | Winpeace(TM) SF–1 |
| 074237–00001 .. | Liquid Toxi Chek Concentrate 8350 |
| 074530–00032 .. | Helmquat 3 SL |
| 074530–00049 .. | Helm Metolachlor 8E |
| 074530–00050 .. | Kendo Pro 9.7 CS |
| 074601–00001 .. | Chlorothalonil Technical Fungicide |
| 074802–00002 .. | Bacteriostatic Water Conditioner Model AM1O54AG |
| 075369–00001 .. | CPMCHLOR |
| 075449–00003 .. | Sodium Bichromate Solution 69% |
| 075801–00002 .. | Ateze |
| 075829–00002 .. | H2Pro Clean Start Bottle B |
| 079533–00003 .. | Coleman Skinsmart Insect Repellent Towelettes |
| 080224–00005 .. | Ovocontrol G |
| 080286–00002 .. | Splat PBW 30M–1 |
| 080286–00005 .. | Splat GBM |
| 080286–00006 .. | Splat LBAM HD |
| 080286–00008 .. | Splat LBAM LD |
| 080289–00013 .. | Strada XT |
| 080346–00004 .. | MDF–500D Part A |
| 080346–00005 .. | MDF–500D Part B |
| 080656–20001 .. | Genchlor 12.5% |
| 081114–00001 .. | Amp21 |
| 081391–00001 .. | Nations AG II, LLC Oxyfluorfen 2 Herbicide |
| 081910–00001 .. | PCMX |

| Registration No. | Product name |
|---|---|
| 082397–00002 .. | Chem-Fish Synergized |
| 082397–00003 .. | Powdered Cube Root |
| 082498–00002 .. | Grandslam 4XS Herbicide |
| 082498–00003 .. | Glyphosate 41% Super Concentrate Herbicide |
| 082498–00004 .. | Glyphosate 2% RTU Herbicide |
| 082534–00003 .. | Oxy 2EC |
| 082542–00028 .. | Solera IVM Herbicide |
| 082691–00002 .. | Stay Clean Additive B |
| 082866–00001 .. | Paraquat 3SL Herbicide |
| 083030–00001 .. | Citrex |
| 083403–00001 .. | Bactiguard Air Filters |
| 083742–00002 .. | Pond Weed Defense |
| 084195–00001 .. | Iobio Bacteria, Slime and Algae Control |
| 085340–00001 .. | Cerro Flow Products |
| 085531–00001 .. | Mavea Maxtra |
| 085905–00005 .. | CFL–3%-Diflubenzuron Feedthrough |
| 086363–00014 .. | KT Propicon 3.6EC |
| 087246–00006 .. | Cliniweave AV Powder |
| 087373–00001 .. | Argite Fipronil 96.5% Technical |
| 088050–00001 .. | Aim-C |
| 088423–00002 .. | DTN 1000 Antimicrobial |

## IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until January 15, 2014, 1 year after the date on which the fee was due.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

## List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: August 29, 2013.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2013–22352 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2013–0626; FRL–9900–98–ORD]**

## Human Studies Review Board; Notification of a Public Meeting

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Office of the Science Advisor announces a public meeting of the Human Studies Review Board to advise the Agency on the EPA scientific and ethical reviews of research with human subjects.

**DATES:** This public meeting will be held on October 1, 2013, from approximately 12:30 p.m. to approximately 5:30 p.m. Eastern Time. Comments may be submitted on or before noon (Eastern Time) on Thursday, September 24, 2013.

**ADDRESSES:** Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2013–0626, by one of the following methods:

*Internet: http://www.regulations.gov:* Follow the online instructions for submitting comments.

*Email: ORD.Docket@epa.gov.*

*Mail:* The EPA Docket Center EPA/DC, ORD Docket, Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

*Hand Delivery:* The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA WJC West, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site *http://www.epa.gov/epahome/dockets.htm.*

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0626. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://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 the EPA without going through *http://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, the EPA recommends that you include your name and other contact information in the body of your comment and with any electronic storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 FURTHER INFORMATION CONTACT:** Any member of the public who wishes to receive further information should contact Jim Downing at telephone number (202) 564–2468; fax: (202) 564–2070; email address: *downing.jim@epa.gov* or Lu-Ann Kleibacker on telephone number (202) 564–7189; fax (202) 564–2070; email address *kleibacker.lu-ann@epa.gov;* mailing address Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

**SUPPLEMENTARY INFORMATION:**

*Location:* The meeting will be held at the EPA Conference Center—S–4380, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202.

*Meeting access:* Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

*Procedures for providing public input:* Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, ''Public Meeting'' under subsection D. ''How May I Participate in this Meeting?'' of this notice.

## I. Public Meeting

*A. Does this action apply to me?*

This action is directed to the public in general. This Notice may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act. This notice might also be of special interest to participants of studies involving human subjects, or representatives of study participants or experts on community engagement. Since many entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I access electronic copies of this document and other related information?*

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA WJC West, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*). The Agency's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by the last week of September 2013. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/.* For questions on document availability, or if you do not have access to the Internet, consult either Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT**.

*C. What should I consider as I prepare my comments for the EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data that you used to support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by the 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.

*D. How may I participate in this meeting?*

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by the EPA, it is imperative that you identify Docket ID number EPA–HQ–ORD–2013–0626 in the subject line on the first page of your request.

*1. Oral comments.* Requests to present oral comments will be accepted up to Tuesday, September 24, 2013. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing or Lu-Ann Kleibacker, under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Tuesday, September 24, 2013, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

*2. Written comments.* Submit your written comments prior to the meeting. For the Board to have the best opportunity to review and consider your

comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the HSRB members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the agency strongly encourages you to submit such comments no later than noon, Eastern Time, Tuesday, September 24, 2013. You should submit your comments using the instructions in Section I., under subsection C., ''What Should I Consider as I Prepare My Comments for the EPA?'' In addition, the agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing or Lu-Ann Kleibacker listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

*E. Background*

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 § 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the Agency's Science Advisor.

*1. Topic for discussion.* At its meeting on October 1, 2013, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding this topic:

A new scenario design and associated protocol from the Antimicrobial Exposure Assessment Task Force II (AEATF–II) describing proposed research to monitor the dermal and inhalation exposure during manual pouring of solid formulation antimicrobial products. EPA requests the advice of the HSRB concerning whether, if it is revised as suggested in EPA's review and if it is performed as described, this research is likely to generate scientifically reliable data, useful for assessing the exposure of those who pour solid formulation antimicrobial pesticide products, and to meet the applicable requirements of 40 CFR part 26, subparts K and L.

In addition, the EPA will present general information about EPA's Repellency Awareness Program and discuss possible implications of this program for the HSRB.

*2. Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/ www.regulations.gov.* In addition, information regarding the Board's final meeting report, will be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 9, 2013.

**Glenn Paulson,**

*Science Advisor.*

[FR Doc. 2013–22745 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2013–0069; FRL–9383–4]**

## Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2012 through March 31, 2013 to control unforeseen pest outbreaks.

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

Potentially affected entities may include:

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

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0069, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to

result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

**III. Emergency Exemptions**

*A. U.S. States and Territories*

Arkansas

State Plant Board

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 10, 2012 to December 10, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 10, 2012; Effective date: January 1, 2013 to December 31, 2013.

California

Department of Pesticide Regulation

*Specific exemption:* EPA authorized the use of boscalid and pyraclostrobin for post harvest use on Belgian endive to control the fungal pathogen, *Sclerotinia sclerotiorum* on November 15, 2012; Effective date: December 1, 2012 to February 15, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 4, 2012 to December 4, 2013.

*Specific exemption:* EPA authorized the use of mancozeb on walnuts to control walnut blight (*Xanthomonas campestris pv. juglandis*); December 21, 2012 to June 15, 2013.

*Specific exemption:* EPA authorized the use of flonicamid on strawberries to control Lygus bug (*Lygus hesperus*); October 4, 2012 to November 30, 2012.

*Specific exemption:* EPA authorized the use of thiabendazole in mushrooms to control trichoderma green mold; February 1, 2013 to January 11, 2014.

*Specific exemption:* EPA authorized the use of naphthaleneacetic acid, ethyl ester on avocado for sprout inhibition on March 20, 2013; Effective date: April 16, 2013 to:April 15, 2014.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; February 15, 2013 to September 30, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 17, 2012; Effective date: January 1, 2013 to December 31, 2013.

Colorado

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; November 21, 2012 to November 21, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; February 8, 2013 to September 30, 2013.

Delaware

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; January 8, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 18, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of thiabendazole in mushrooms to control trichoderma green mold; January 18, 2013 to January 11, 2014.

Florida

Department of Agriculture and Consumer Services

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 4, 2012 to December 4, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 17, 2012; Effective date: January 1, 2013 to December 31, 2013.

Georgia

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; January 29, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 29, 2013 to December 31, 2013.

Hawaii

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; February 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 29, 2013 to December 31, 2013.

Idaho

Department of Agriculture

*Specific exemption:* EPA authorized the use of linuron on lentils to control the weeds, prickly lettuce and dog fennel; December 10, 2012 to June 30, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 23, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips on January 29, 2013; Effective date: March 15, 2013 to September 15, 2013.

Illinois

Department of Agriculture

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 3, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; January 22, 2013 to December 31, 2013.

Indiana

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; January 22, 2013 to December 31, 2013.

Iowa

Department of Agriculture and Land Stewardship

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; February 15, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 5, 2013 to December 31, 2013.

Kentucky

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 10, 2012 to December 10, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite

on December 10, 2012; Effective date: January 1, 2013 to December 31, 2013.

Louisiana

Department of Agriculture & Forestry

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of pyraclostrobin to control brown rust (*Puccinia melanocephala)* on sugarcane; February 12, 2013 to June 30, 2013.

*Specific exemption:* EPA authorized the use of anthraquinone on rice seed to repel blackbirds and reduce damage to rice seedlings; March 8, 2013 to June 1, 2013.

Maine

Department of Agriculture, Food, and Rural Resources

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; March 3, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 5, 2013 to December 31, 2013.

Maryland

Department of Agriculture

*Specific exemption:* EPA authorized the use of thiabendazole in mushrooms to control trichoderma green mold; January 18, 2013 to January 11, 2014.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 23, 2013 to December 31, 2013.

Massachusetts

Department of Agricultural Resources

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 25, 2013 to December 31, 2013.

Michigan

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 4, 2012 to December 4, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 4, 2012; Effective date: January 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of kasugamycin on apples to control fire blight; March 19, 2013 to May 31, 2013.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; March 11, 2013 to September 30, 2013.

Minnesota

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 4, 2012 to December 4, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 12, 2012; Effective date: January 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; March 11, 2013 to September 15, 2013.

Mississippi

Department of Agriculture

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on November 30, 2012; Effective date: January 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 4, 2012 to December 4, 2013.

Missouri

Department of Agriculture

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

Nebraska

Department of Agriculture

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; December 31, 2012 to December 31,

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; January 8, 2013 to December 31, 2013.

Nevada

Department of Agriculture

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; March 22, 2013 to September 30, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 18, 2013 to December 31, 2013.

New York

Department of Environmental Conservation

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips on January 29, 2013; Effective date: May 5, 2013 to September 15, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; February 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 15, 2013 to December 31, 2013.

North Dakota

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; November 21, 2012 to November 21, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 17, 2012; Effective date: January 1, 2013 to December 31, 2013.

Ohio

Department of Agriculture

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 17, 2012; Effective date: January 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; February 1, 2013 to December 31, 2013.

Oregon

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; November 15, 2012 to November 15, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 21, 2012; Effective date: January 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of quinclorac on cranberries to control yellow loosestrife; March 1, 2013 to August 1, 2013.

*Specific exemption:* EPA authorized the use of fenoxaprop-*p*-ethyl in grasses grown for seed to control various weed species; February 13, 2013 to September 15, 2013.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; March, 8, 2013 to September 15, 2013.

Pennsylvania

Department of Agriculture

*Specific exemption:* EPA authorized the use of thiabendazole in mushrooms to control trichoderma green mold; January 11, 2013 to January 11, 2014.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; February 15, 2013 to December 31, 2013.

South Carolina

Department of Pesticide Regulation

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; February 15, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 15, 2013 to December 31, 2013.

South Dakota

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; October 19, 2012 to October 19, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 8, 2013 to December 31, 2013.

Texas

Department of Agriculture

*Quarantine exemption:* EPA authorized the use of fipronil in an expansion of the registered use around outside structures up to 10 feet up and out to control a newly introduced strain or species of Caribbean crazy ant; November 1, 2012, to November 1, 2015.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of flutriafol on cotton to control cotton root rot; February 1, 2013 to June 30, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 11, 2013 to December 31, 2013.

Utah

Department of Agriculture and Food

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips; March 18, 2013 to September 1, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; March 5, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 5, 2013 to December 31, 2013.

Vermont

Agency of Agriculture Food and Markets

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; October 17, 2012 to December 31, 2012.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 28, 2013 to December 31, 2013.

Washington

Department of Agriculture

*Specific exemption:* EPA authorized the use of linuron on lentils to control the weeds, prickly lettuce and dog fennel; December 10, 2012 to June 30, 2013.

*Specific exemption:* EPA authorized the use of quinclorac on cranberries to control yellow loosestrife; March 1, 2013 to August 1, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; January 22, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; January 23, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips on February 8, 2013; Effective date: May 1, 2013 to October 31, 2013.

West Virginia

Department of Agriculture

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; March 8, 2013 to December 31, 2013.

Wisconsin

Department of Agriculture, Trade and Consumer Protection

*Quarantine exemption:* EPA authorized the use of pyrethrins to a single pond, for eradication efforts of the invasive Red Swamp Crayfish; November 26, 2012 to September 30, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; February 7, 2013 to December 31, 2013.

Wyoming

Department of Agriculture

*Specific exemption:* EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite on December 12, 2012; Effective date: January 1, 2013 to December 31, 2013.

*Specific exemption:* EPA authorized the use of amitraz in beehives to control varroa mite; December 31, 2012 to December 31, 2013.

*Specific exemption:* EPA authorized the use of diflubenzuron in alfalfa to control grasshoppers and Mormon crickets; March 22, 2013 to October 31, 2013.

*B. Federal Department and Agencies*

Agriculture Department

Animal and Plant Health Inspection Service

*Quarantine exemption:* EPA authorized the use of citric acid to control foot and mouth disease virus and African swine fever virus on porous and non-porous food and non-food contact surfaces; October 22, 2012 to October 22, 2015.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: September 12, 2013.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2013–22703 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2012–0844; FRL–9395–2]**

## Product Cancellation Order for Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations, voluntarily requested by the registrants, and accepted by the Agency, of the products listed in Tables 1 and 2 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a May 29, 2013 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II., to voluntarily cancel these product registrations. In the May 29, 2013

notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received a comment on the notice but it did not merit its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The effective date of the cancellations that are the subject of this notice are as follows: The cancellation for the manufacturing products, listed in Table 1 of Unit II., will be effective September 30, 2015, no use of listed manufacturing products to formulate any end use products will be permitted after December 31, 2015, and the cancellation for the end use products listed in Table 2 of Unit II., will be effective December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Molly Clayton, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001, telephone number: (703) 603–0522; email address: *clayton.molly@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry, pesticide users, and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0844, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

## II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of certain manufacturing use and end use pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—MANUFACTURING USE PRODUCT CANCELLATIONS

| Registration No. | Product name |
|---|---|
| 1021–1060 ..... | D-Trans Allethrin 90% Concentrate. |
| 1021–1128 ..... | D-Trans Intermediate 1868. |
| 1021–1550 ..... | Evercide Intermediate 2416. |
| 1021–1575 ..... | Evercide Intermediate 2941. |

TABLE 2—END USE PRODUCT CANCELLATIONS

| Registration No. | Product name |
|---|---|
| 1021–1594 ..... | Evercide Residual Pressurized Spray 2523. |
| 1021–1607 ..... | Evercide Residual Pressurized Spray 2581. |
| 5178–5 ..... | Kilmos PF Mosquito Repellent Coils. |
| 5178–10 ..... | Kilmos PF Mosquito Repellent Sticks. |
| 8848–72 ..... | Black Jack DS205 Insect Killer. |
| 9688–230 ..... | Chemsico Aerosol Insecticide LD. |
| 9688–233 ..... | Chemsico Wasp & Hornet Killer DL. |
| 9688–255 ..... | Chemsico Wasp # Hornet Killer DS. |
| 10807–436 ..... | Konk Insect Killer. |
| 13283–20 ..... | Rainbow Point Three Wasp & Ant Spray. |
| 13283–22 ..... | Rainbow Flying and Crawling Bug Killer. |
| 13283–24 ..... | Rainbow Flying & Crawling Bug Killer, IV. |
| 13283–29 ..... | Multi-Bug II. |
| 13283–36 ..... | Rainbow Liquid Wasp & Ant Spray. |
| 22950–14 ..... | Cobra PF Mosquito Repellent Coils. |
| 43917–1 ..... | Spira Air-O-Mat. |
| 43917–7 ..... | Spira Area Mosquito Repellent. |
| 43917–8 ..... | Spira Punks Mosquito Coils II. |
| 45385–9 ..... | Chem-Tox Insect Spray. |
| 46515–48 ..... | House & Garden Bug Killer 4. |
| 63376–1 ..... | Family Mosquito Coils. |
| 63376–2 ..... | Family Mosquito Repellent Coils. |
| 63376–5 ..... | Family Mosquito Repellent Sticks. |
| 82539–2 ..... | Ultimate Bug Candle. |
| 83467–1 ..... | Buzz Buster Mosquito Repellant Coils. |

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Tables 1 and 2 of this unit.

TABLE 3—REGISTRANTS OF CANCELLED PRODUCTS

| EPA company No. | Company name and address |
|---|---|
| 1021 | McLaughlin Gormley King Co., 8810 10th Ave. North, Minneapolis, MN 55427. |
| 5178 | Blood Protection Company (China), Ltd., Agent: Regulatory West Co., LLC, 8203 West 20th St., Suite A, Greeley, CO 80634. |
| 8848 | Safeguard Chemical Corporation, Agent: Regulatory West Co., LLC, 8203 West 20th St., Suite A, Greeley, CO 80634. |
| 9688 | Chemsico, P.O. Box 142642, St. Louis, MO 63114. |
| 10807 | Amrep, Inc., 990 Industrial Park Dr., Marietta, GA 30062. |
| 13283 | Rainbow Technology Corporation, Agent: Regulatory West Co., LLC, 8203 West 20th St., Suite A, Greeley, CO 80634. |

TABLE 3—REGISTRANTS OF CANCELLED PRODUCTS—Continued

| EPA company No. | Company name and address |
|---|---|
| 22950 | Coils International, Inc., Agent: Regulatory West Co., LLC, 8203 West 20th St., Suite A, Greeley, CO 80634. |
| 43917 | Zobele Holdings, P.A., Agent: Regulatory West Co., LLC, 8203 West 20th St., Suite A, Greeley, CO 80634. |
| 45385 | CTX-Cenol Inc., 1393 East Highland Rd., Twinsburg, OH 44087. |
| 46515 | Celex, Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114. |
| 63376 | Family Products SDN BHD, Agent: Regulatory West Co., LLC, 8203 West 20th St., Suite A, Greeley, CO 80634. |
| 82539 | Kerslig Candle Light, 5807 Church Hill Way, Medina, OH 44256. |
| 83467 | Multinational Resources, Inc., 9380 SW. 72 St., Suite B211, Miami, FL 33173. |

### III. Summary of Public Comments Received and Agency Response to Comments

The Agency received one comment indicating that all pesticides should be disallowed because of their effect on the environment. This did not merit further review of the requests.

### IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation of the registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency orders that the product registrations identified in Tables 1 and 2 of Unit II., are canceled. The effective date of the cancellations that are the subject of this notice are as follows: The cancellation for the manufacturing products, listed in Table 1 of Unit II., will be effective September 30, 2015, no use of listed manufacturing products to formulate any end use products will be permitted after December 31, 2015, and the cancellation for the end use products listed in Table 2 of Unit II., will be effective December 31, 2016. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II., in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI., will be a violation of FIFRA.

### V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of May 29, 2013 (78 FR 32248) (FRL–9386–4). The comment period closed on June 28, 2013.

### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of manufacturing use products listed in Table 1 of Unit II., up to and including September 30, 2015, and end use products listed in Table 2 of Unit II., up to and including December 31, 2016. The following terms and conditions are applicable to existing stocks:

- No sale or distribution of listed manufacturing products by any person, other than for purposes of disposal or export, will be permitted after September 30, 2015.
- No use of listed manufacturing products to formulate end use products will be permitted after December 31, 2015.
- As of January 1, 2017, only persons other than registrants will be allowed to sell, distribute, or use existing stocks of cancelled end use products until such stocks are exhausted. Use of existing stocks will be permitted only to the extent that the use is consistent with the terms of the previously approved labeling accompanying the product used.

### List of Subjects

Environmental protection, Pesticides and pests, Allethrins.

Dated: September 12, 2013.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2013–22718 Filed 9–17–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011117–051.

*Title:* United States/Australasia Discussion Agreement.

*Parties:* ANL Singapore Pte Ltd.; CMA–CGM; Compagnie Maritime Marfret S.A.; Hamburg-Süd; Hapag-Lloyd AG; and Mediterranean Shipping Company S.A.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

*Synopsis:* The amendment deletes A.P. Moller Maersk A/S trading under the name of Maersk Line as a party to the agreement.

*Agreement No.:* 201157–003.

*Title:* USMX–ILA Master Contract between United States Maritime Alliance, Ltd. and International Longshoremen's Association.

*Parties:* United States Maritime Alliance, Ltd., on behalf of Management, and the International Longshoremen's Association, AFL–CIO.

*Filing Parties:* William M. Spelman, Esq.; The Lambos Firm; 29 Broadway, 9th Floor; New York, NY 10006 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

*Synopsis:* The amendment extends the term of the MOS through September 2018, and increases the amount of the overall assessment fee.

Dated: September 13, 2013.

By Order of the Federal Maritime Commission.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2013–22716 Filed 9–17–13; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Capacity Building Assistance for High Impact HIV Prevention, Funding Opportunity Announcement (FOA) PS14–1403, Initial Review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned SEP:

*Times and Dates:* 8:00 a.m.–8:00 p.m., November 12–15, 2013 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Capacity Building Assistance for High Impact HIV Prevention'', FOA PS14–1403.

*Contact Person for More Information:* Harriette A. Lynch, Public Health Analyst, CDC, 1600 Clifton Road NE., Mailstop E07, Atlanta, Georgia 30333, Telephone: (404) 718–8837.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–22613 Filed 9–17–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Breast Cancer in Young Women (ACBCYW)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Times and Dates:*

8:00 a.m.–5:00 p.m. EST, October 31, 2013.

8:00 a.m.–1:00 p.m. EST, November 1, 2013.

*Place:* Centers for Disease Control and Prevention, 4770 Buford Highway, Chamblee Building 107, Rooms 1A and 1B, Atlanta, Georgia 30341

Limited teleconference access is also available. Login information is as follows:

*For Public:*

TOLL-FREE PHONE #: 888–989–8135

Participant passcode: BREASTCANCER

Net Conference URL: *https://www.mymeetings.com/nc/join/*

Conference number: PW7128790

Audience passcode: BREASTCANCER

or

Public can join the event directly: *https://www.mymeetings.com/nc/join.php?i=PW7128790&p=BREASTCANCER&t=c*

There is also a toll free number for anyone outside of the USA: TOLL # 1–203–827–7034

Participant passcode: BREASTCANCER

*Status:* Open to the public, limited only by the space and phone lines available.

*Purpose:* The committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

*Matters To Be Discussed:* The agenda will include discussions on the current and emerging topics related to breast cancer in young women. These may include risk communication and health education, as well as approaches to increase awareness of clinicians/practitioners regarding topics such as breast cancer risk, breast health, symptoms, diagnosis, and treatment of breast cancer in young women.

Agenda items are subject to change as priorities dictate.

Online Registration Required: In order to expedite the security clearance process required for entry into a Federal building, all ACBCYW attendees must register for the meeting online at least 15 days in advance at *http://www.cdc.gov/cancer/breast/what_cdc_is_doing/meetings.htm.* Please complete all the required fields before submitting your registration and submit no later than October 16, 2013. Each meeting day, attendees must provide CDC staff and security with driver's license/state issued ID, or passport.

*Contact Person for More Information:* Temeika L. Fairley, Ph.D., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 5770 Buford Hwy. NE., Mailstop K52, Atlanta, Georgia 30341, Telephone (770) 488–4518, Fax (770) 488–4760.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

**Elaine Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–22612 Filed 9–17–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1119]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the information collection provisions of reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers, and provides notice of and invites comments on our proposed revisions to the

electronic submission system and paper-based forms for this collection.

**DATES:** Submit either electronic or written comments concerning the collection of information by November 18, 2013.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers—21 CFR 108.25 and 108.35, and Parts 113 and 114 (OMB Control Number 0910–0037)—Revision**

Section 402 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342) deems a food to be adulterated, in part, if the food bears or contains any poisonous or deleterious substance which may render it injurious to health. Section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction or delivery for introduction into interstate commerce of adulterated food. Under section 404 of the FD&C Act (21 U.S.C. 344), our regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit us to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum.* The spores of *C. botulinum* need to be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, our regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with us using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms also must document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c) (21 CFR 113.89, 114.89, and 114.100(c))); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (21 CFR 113.60(c) (thermally processed foods) and 114.80(b) (21 CFR 114.80(b) (acidified foods)).

The records of processing information are periodically reviewed during factory inspections by FDA to verify fulfillment of the requirements in parts 113 or 114. Scheduled thermal processes are examined and reviewed to determine their adequacy to protect public health. In the event of a public health emergency, records are used to pinpoint potentially hazardous foods rapidly and thus limit recall activity to affected lots.

As described in our regulations, processors may obtain the paper versions of Forms FDA 2541, FDA 2541a, and FDA 2541c by contacting us at a particular address. Processors mail completed paper forms to us. However, processors who are subject to § 108.25, 108.35, or both, have an option to submit Forms FDA 2541, FDA 2541a, and FDA 2541c electronically (Ref. 1) (see also 76 FR 11783 at 11785; March 3, 2011).

In this document, we are providing notice that we are updating the process filing portion of the electronic submission system to incorporate ''smart form'' technology. The updated process filing portion of the electronic submission system will query the processor about the processes used to produce the food and present only those data entry fields that are applicable. This will reduce the burden on processors and reduce errors in process filing because processors will no longer need to evaluate whether particular data entry fields are applicable to their products. For example, when a processor submits a process filing for a

product that is processed using a low-acid retorted method with a process mode of ''agitating'', ''smart form'' technology would bypass questions that are not applicable to this process mode option.

Although we encourage commercial processors to use the electronic submission system for plant registration and process filing, we will continue to make paper-based forms available. To standardize the burden associated with process filing, regardless of whether the process filing is submitted electronically or using a paper form, we are proposing to eliminate Forms FDA 2541a (Ref. 2) and FDA 2541c (Ref. 3) and replace these two forms with a total of four forms. Each of the four proposed replacement forms will pertain to a specific type of commercial processing and will be available both on the electronic submission system and as a paper-based form. The electronic submission system and the paper-based form will ''mirror'' each other to the extent practicable. The four proposed replacement process filing forms are as follows:

- Form FDA 2541d (Food Process Filing for Low-Acid Retorted Method) (Ref.4);
- Form FDA 2541e (Food Process Filing for Acidified Method) (Ref. 5);
- Form FDA 2541f (Food Process Filing for Water Activity/Formulation Control Method) (Ref. 6); and
- Form FDA 2541g (Food Process Filing for Low-Acid Aseptic Systems) (Ref. 7).

Some of the data entry fields on the four proposed replacement process filing forms are not on current Forms FDA 2541a and FDA 2541c. We added certain data entry fields to improve the efficiency of our review of the process filings. For example, the four proposed replacement forms include data entry fields for the ''food product group'' (such as liquid, ready-to-eat ''breakfast foods''). We estimate that any time it would take to provide such information not already on Form FDA 2541a or FDA 2541c would be offset by the time processors will save by not having to evaluate whether certain data entry fields on Form FDA 2541a or FDA 2541c are applicable to their products. At this time, the paper-based versions of the four proposed replacement forms and their instructions are all available for review as references to this document (Refs. 4 through 11) or at *http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm.* After we review the comments received in response to this notice, we will determine what, if any, changes will be made to the paper-based versions of the forms. We will then complete the development of the electronic submission system to mirror the revised paper forms. The draft electronic versions of the forms will be made available for review on OMB's Web site when we publish a second notice in the **Federal Register** announcing the submission of the information collection request to OMB. That notice will have a 30-day public comment period.

*Description of Respondents:* The respondents to this information collection are commercial processors and packers of acidified foods and thermally processed low-acid foods in hermetically sealed containers.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | FDA form No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| §§ 108.25(c)(1) and 108.35(c)(2); Food canning establishment registration | 2541 | 645 | 1 | 645 | 0.17 (10 mins.) | 110 |
| § 108.25(c)(2); Food process filing for acidified method | 2541e | 726 | 11 | 7,986 | 0.333 (20 mins.) | 2,659 |
| § 108.35(c)(2); Food process filing for low-acid retorted method | 2541d | 336 | 12 | 4,032 | 0.333 (20 mins.) | 1,343 |
| § 108.35(c)(2); Food process filing for water activity/formulation control method | 2541f | 37 | 6 | 222 | 0.333 (20 mins.) | 74 |
| § 108.35(c)(2); Food process filing for low-acid aseptic systems | 2541g | 42 | 22 | 924 | 0.75 (45 mins.) | 693 |
| §§ 108.25(d) and 108.35(d) and (e); Report of any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce | N/A | 1 | 1 | 1 | 4 | 4 |
| Total | | | | | | 4,883 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate of the number of respondents in table 1 on registrations, process filings, and reports received over the past 3 years. The hours per response reporting estimates are based on our experience with similar programs and information received from industry. The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is minimal because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. We estimate that we will receive one report annually under §§ 108.25(d) and

108.35(d) and (e). The report is expected to take 4 hours per response, for a total of 4 hours.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR part | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 108, 113, and 114 | 10,392 | 1 | 10,392 | 250 | 2,598,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate of 10,392 recordkeepers in table 2 on its records of the number of registered firms, excluding firms that were inactive or out of business, yet still registered. To avoid double-counting, we have not included estimates for §§ 108.25(g), 108.35(c)(2)(ii), and 108.35(h) because they merely cross-reference recordkeeping requirements contained in parts 113 and 114 and have been accounted for in the recordkeeping burden estimate. We estimate that 10,392 firms will expend approximately 250 hours per year to fully satisfy the recordkeeping requirements in parts 108, 113 and 114, for a total of 2,598,000 hours.

Finally, our regulations require that processors mark thermally processed low-acid foods in hermetically sealed containers (§ 113.60(c) and acidified foods (§ 114.80(b)) with an identifying code to permit lots to be traced after distribution. We seek OMB approval of the third party disclosure requirements in §§ 113.60(c) and 114.80(b). However, we have not included a separate table to report the estimated burden of these regulations. No burden has been estimated for the third party disclosure requirements in §§ 113.60(c) and 114.80(b) because the coding process is done as a usual and customary part of normal business activities. Coding is a business practice in foods for liability purposes, inventory control, and process control in the event of a problem. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

## II. 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.* (We have verified the Web site addresses in this reference section, but we are not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.)

1. FDA 2012. ''Guidance for Industry: Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541a and FDA 2541c (Food Process Filing Forms) to FDA in Electronic or Paper Format''. Available at *http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/ucm309376.htm.*

2. Form FDA 2541a. Food Process Filing for All Methods Except Low-Acid Aseptic. Available at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM076784.pdf.*

3. Form FDA 2541c. Food Process Filing for Low-Acid Aseptic Systems. Available at *http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM123687.pdf.*

4. Draft Form 2541d. Food Process Filing for Low-Acid Retorted Method. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM365066.pdf.*

5. Draft Form 2541e. Food Process Filing for Acidified Method. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM365058.pdf.*

6. Draft Form 2541f. Food Process Filing for Water Activity/Formulation Control Method. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM365059.pdf.*

7. Draft Form 2541g. Food Process Filing for Low-Acid Aseptic Systems. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM365060.pdf.*

8. Draft Instructions for Paper Submission of Form FDA 2541d. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM366881.pdf.*

9. Draft Instructions for Paper Submission of Form FDA 2541e. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM366882.pdf.*

10. Draft Instructions for Paper Submission of Form FDA 2541f. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM366884.pdf*

11. Draft Instructions for Paper Submission of Form FDA 2541g. Available at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/UCM366885.pdf.*

Dated: September 13, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–22674 Filed 9–17–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–1067]**

### Draft Guidance for Industry on Patient Counseling Information Section of Labeling for Human Prescription Drug and Biological Products—Content and Format; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for

industry entitled ''Patient Counseling Information Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' The recommendations in the draft guidance are intended to help ensure that the labeling is clear, useful, informative, and to the extent possible, consistent in content and format.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 18, 2013.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jonas Santiago, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6358, Silver Spring, MD 20993–0002, 301–796–5346; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Patient Counseling Information Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' This draft guidance provides recommendations for the ''Patient Counseling Information'' section on the following: How to decide what topics to include in the section, how to present information within the section, and how to format and organize section contents.

This guidance is one of a series of guidances FDA is developing, or has developed, to assist applicants with the content and format of the labeling for human prescription drug and biological products. In the **Federal Register** of January 24, 2006 (71 FR 3922), FDA published a final rule on labeling for human prescription drug and biological products. The final rule and additional guidances can be accessed at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/LawsActsandRules/ucm084159.htm*. The labeling requirements and these guidances are intended to make information in prescription drug labeling easier for health care practitioners to access, read, and use.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the Agency's current thinking on the content and format of the ''Patient Counseling Information'' section of labeling for human prescription drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit either electronic comments regarding this document 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*.

## III. The Paperwork Reduction Act of 1995

This draft guidance also 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 collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov*.

Dated: September 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–22644 Filed 9–17–13; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–D–0643]**

### Guidance for Industry on Electronic Source Data in Clinical Investigations; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Electronic Source Data in Clinical Investigations.'' This document provides guidance to sponsors, contract research organizations (CROs), clinical investigators, and others involved in the capture, review, and retention of electronic source data in FDA-regulated clinical investigations. This guidance promotes capturing source data in electronic form, and it is intended to assist in ensuring the reliability, quality, integrity, and traceability of data from electronic source to electronic regulatory submission.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448 (the guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800); or the Division of Small Manufacturers, International and

Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the 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:** Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1160, Silver Spring, MD 20993–0002, 301–796–5333; or Jonathan Helfgott, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5369, Silver Spring, MD 20993–0002, 301–796–5636.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Electronic Source Data in Clinical Investigations.'' This document provides guidance to sponsors, CROs, clinical investigators, and others involved in the capture, review, and retention of electronic source data in FDA-regulated clinical investigations. This guidance promotes capturing source data in electronic form, and it is intended to assist in ensuring the reliability, quality, integrity, and traceability of data from electronic source to electronic regulatory submission.

With the use of computerized systems for capturing clinical study data, it is common to find at least some source data recorded electronically. Common examples include, but are not limited to, clinical data initially recorded in electronic health records maintained by healthcare providers and institutions, electronic laboratory reports, electronic medical images from devices, and electronic diaries completed by study subjects.

Capturing source data electronically and transmitting it to the electronic case report form (eCRF) should help to: (1) Eliminate unnecessary duplication of data; (2) reduce the possibility for transcription errors; (3) encourage entering source data during a subject's visit, where appropriate; (4) eliminate transcription of source data prior to entry into an eCRF; (5) facilitate remote monitoring of data; (6) promote real-time access for data review; and (7) facilitate the collection of accurate and complete data.

In the **Federal Register** of November 20, 2012 (77 FR 69632), FDA issued a draft version of this guidance entitled ''Electronic Source Data in Clinical Investigations.'' The comment period on the draft guidance ended on March 26, 2013 (see the correction notice of December 26, 2012 (77 FR 76049)). Most of the comments sought clarification on the topics discussed in the guidance. We have reviewed all comments received on the draft guidance. As a result of the public comments, we have clarified the following sections of the guidance: I. Introduction, II. Background, III. Electronic Source Data (and its subsections), and IV. Use and Description of Computerized Systems in Clinical Investigations. We have also updated the Glossary definitions, added a References section, and added reference citations throughout the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the Agency's current thinking on the capture, review, and retention of electronic source data in FDA-regulated clinical investigations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit either electronic comments regarding this document 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.*

## III. Paperwork Reduction Act of 1995

This guidance refers to collections of information that 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). This guidance pertains to sponsors, clinical investigators, CROs, and others involved in the capture, review, and retention of electronic source data in FDA-regulated clinical investigations and who send certain information to FDA or others, or who keep certain records and make them available to FDA inspectors. The information collection discussed in the guidance is contained in our investigational new drug regulations in part 312 (21 CFR part 312) and approved under OMB control number 0910–0014, including §§ 312.62(b) and 312.58(a). In addition, the collection of information in 21 CFR part 11, as discussed in the guidance, is approved under OMB control number 0910–0303. OMB approval of the information collection in the guidance entitled ''Computerized Systems Used in Clinical Investigations,'' as mentioned in the guidance, is discussed in the May 10, 2007 (72 FR 26638), **Federal Register** Notice of Availability of that guidance. The capture, review, and retention of electronic source data, as described in this guidance, would not result in any new costs, including capital costs or operating and maintenance costs, because sponsors and others already have and are experienced with using the computer-based equipment and software necessary to be consistent with the guidance.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, http://www.fda.gov/RegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov.*

Dated: September 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–22645 Filed 9–17–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1038]**

## Over-the-Counter Ophthalmic Drug Products—Emergency Use Eyewash Products; Announcement of Public Hearing; Request for Comments

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

**ACTION:** Notice of public hearing; request for comments.

The Food and Drug Administration (FDA) is announcing a public hearing to obtain information on the formulation, manufacturing, and labeling of currently marketed over-the-counter (OTC) emergency first aid eyewash drug products, including the components of these products, and the conditions under which such products are safe and effective for their intended uses.

*Date and Time:* The public hearing will be held on December 4, 2013, from 9 a.m. to 5 p.m. Submit electronic or written requests to make oral presentations and comments by November 13, 2013. Electronic or written comments will be accepted after the hearing until March 4, 2014.

*Location:* The public hearing will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

*Contact Persons:* Mary C. Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–3519, FAX: 301–847–8753, *mary.gross@fda.hhs.gov;* or Elaine Abraham, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–0843, FAX: 301–796–9899, *elaine.abraham@fda.hhs.gov.*

*Comments:* Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

*Transcripts:* Transcripts of the meeting will be available for review at the Division of Dockets Management (see *Comments*) and on the Internet at *http://www.regulations.gov* within 30 days of the public hearing. A transcript also will be available in either hard copy or on CD–ROM after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Office of Management Programs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Product Overview*

OTC emergency first aid eyewash drug products (EE products) are typically water-based solutions used in the workplace to flush or irrigate the eye to reduce the chance of severe injury caused by exposure to acid, alkali, particulate matter, or other hazardous materials. This public hearing will focus on EE products, including the components of EE products, which are marketed for use in workplace EE stations.

There are two general types of EE products: Large volume and small volume. FDA considers ''large volume'' EE products those that provide sufficient fluid for 15 minutes of continuous flushing, as needed to satisfy the applicable performance standard for Occupational Safety and Health Administration (OSHA)-compliant eyewash stations (ANSI Standard Z 358.1). It is our current understanding that, within large-volume EE products, there are two general configurations currently marketed:

- Ready-to-use products that include single-use pre-filled, sealed wall-mount or portable eyewash stations and pre-filled, sealed replacement solutions, such as replacement canisters or bags, for refillable eyewash stations. Both sterile and nonsterile products are currently in the marketplace.
- Concentrated solutions and additives intended for mixing with potable water for use in large-volume refillable eyewash stations. The resulting solution is not sterile and is replaced after each use and at regular intervals if not used. Both sterile and nonsterile products are currently in the marketplace.

Small volume EE products (16 fl. oz. to 32 fl. oz.) are marketed in a variety of container and applicator configurations, such as squeeze bottles with built-in eye cups or applicator nozzles. These small volume EEs are often used to deliver immediate flushing fluid prior to use of a large volume EE. We are interested in obtaining information on both the large volume and small volume EE products during this public meeting. Questions posed in this document regarding sterility and formulation are applicable to both types of EE products.

Emergency eyewash stations using direct plumbing will not be considered as part of this public meeting.

### *B. Regulatory Background*

EE products are a type of ophthalmic drug product that FDA is considering for inclusion in the OTC drug monograph system. An OTC drug monograph is a set of FDA regulations that establish conditions of use (such as permitted active ingredients and required labeling) under which products within a given therapeutic category may be marketed without an approved new drug application (NDA) or abbreviated new drug application, based on FDA's determination that products described in the monograph are ''generally recognized as safe and effective'' when used under the conditions prescribed, recommended, or suggested in the product's labeling.

FDA published a final monograph on OTC ophthalmic drug products in 1988 (the OTC ophthalmic monograph or final monograph, 21 CFR part 349). The final monograph defines an OTC ophthalmic drug as ''a drug product, which should be sterile in accordance with [21 CFR] 200.50, to be applied in the eyelid or instilled in the eye'' (§ 349.3(a) (21 CFR 349.3(a))). ''Eyewash'' is defined in the final monograph as ''a sterile aqueous solution intended for washing, bathing, or flushing the eye'' (id. at § 349.3(f)), and described in § 349.20 as containing purified water as the active ingredient, together with ''suitable tonicity agents to establish isotonicity with tears, suitable agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent'' as inactive ingredients.

The reference to sterility in § 349.3(a) and (f) is based on a separate regulation, 21 CFR 200.50, which was adopted in 1975 and is applicable to all drugs intended for ophthalmic use. It states in part that all preparations offered or intended for ophthalmic use, including preparations for cleansing the eyes, should be sterile, and if they are not sterile may be considered adulterated and misbranded.

The eyewash products that are defined in and marketed under the final OTC ophthalmic monograph are small-volume products for non-emergency use. The final monograph does not currently include conditions of use for EE products because no safety or efficacy data or other information were submitted on these products during the rulemaking process. After the final monograph was published in 1988, FDA received several requests from industry to clarify the regulatory status of EE products. In response, FDA published a request for data and information on these products in 1989 (call for data, 54 FR 50240 (December 5, 1989)). In the 1989 call for data, FDA recognized the need for eyewash products for emergency first aid treatment of chemical burns (including acid and alkali burns). FDA stated in the call for data that these products could potentially be regulated under the OTC ophthalmic drug monograph and invited the submission of data and information to help facilitate the Agency's consideration of whether to amend the monograph to include these products. FDA received comments in response to the call for data.

On February 19, 2003, FDA proposed to amend the final OTC ophthalmic drug monograph to include a section on EE products (the PR, 68 FR 7951). The PR stated FDA's tentative conclusion that medical references support the safety and effectiveness of EE products to remove acid or alkali chemicals and that immediate flushing of the eye with fluid is urgently needed to lessen the impact of the chemical exposure.

The PR defined EE products as ''products [that] contain water, agents to achieve the pH within a range of 6.6 and 7.4, and a suitable antimicrobial preservative agent. Additionally, they may contain tonicity agents to establish isotonicity with tears and agents for buffering the pH'' (68 FR 7951 at 7955, proposed 21 CFR 349.22). The proposed indication (intended use/purpose) is ''for [''flushing'' or ''irrigating''] the eye to reduce chances of severe injury caused by acid, alkali, or particulate contamination.'' The PR included proposed warnings and directions for use for both ready-to-use EE products and EE products that require mixing a concentrate with potable water.

As noted in the PR, FDA may exercise enforcement discretion to permit an affected OTC ophthalmic drug product that is not the subject of an approved NDA to be marketed until the final monograph becomes effective, provided the following conditions are met: (1) The product or similarly formulated products were marketed as OTC drugs on or before December 4, 1975; (2) the product does not constitute a hazard to health; (3) the product is not regarded as a prescription drug within the meaning of section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)); and (4) the product is an OTC drug and does not bear claims for serious disease conditions that require the attention and supervision of a licensed practitioner (see 68 FR 7951 at 7954 and 7955).

Like all OTC drug products intended for ophthalmic use, EE products are subject to the general sterility requirements in 21 CFR 200.50, as well as general OTC drug requirements, such as drug facts labeling (21 CFR 201.66) and compliance with current good manufacturing practices (21 CFR 330.1(a) and parts 210 and 211).

## II. Scope of the Public Meeting

We have reviewed the information and comments relating to EE products that were submitted in response to the 2003 PR, and have concluded that additional data and information are needed in order to finalize the OTC monograph with respect to EE products.

FDA is holding this public hearing to obtain input from regulated industry, the medical community, consumers, and other interested parties concerning the formulation, manufacturing, and labeling of currently marketed EE drug products, including the components of such, and the conditions under which these products are safe and effective for their intended uses. Input from the public meeting will help FDA to establish final marketing requirements for EE products as part of the OTC ophthalmic drug product monograph, 21 CFR part 349.

FDA is requesting public feedback on the following questions:

1. What ingredients are necessary in EE formulations besides water? What are the functions of these other ingredients? What is the minimum and maximum quantity that should be allowed for these other ingredients?

2. Are there any potential safety concerns or suitability issues with the use of ingredients other than water? What data are available to support the safety and suitability of EE ingredients other than water?

3. What evidence supports the safety and effectiveness/suitability of antimicrobial preservatives when mixed with potable water to limit the presence of certain pathogenic microorganisms (such as Acanthamoeba, bacteria, or fungi)? For example, FDA is aware of published reports of Acanthamoeba having contaminated reservoir EE stations and been a source of infection in people who used these types of EE products (Refs. 1 and 2).

4. Is there evidence that solutions made from EE products mixed with potable water are safer or more effective than potable water used alone? If not, what data would be needed to make that determination?

5. What EE products or types of products are not currently manufactured and distributed as sterile? Are there EE products for which sterility is not necessary for safety? Why or why not?

6. What directions for use are appropriate to ensure the safety and effectiveness of EE products for OTC use?

## III. Attendance at and/or Participation in the Public Hearing

If you wish to attend the hearing or make an oral presentation during the hearing, you must register by submitting an electronic request to: *CDEREYEWASHMEETING@fda.hhs.gov* by close of business on November 13, 2013. Those without email access may register by contacting Mary Gross or Elaine Abraham (see *Contact Persons*). You must provide your name, title, business affiliation (if applicable), address, email address, telephone and fax numbers, and type of organization you represent (e.g., industry, consumer organization) and a brief summary of comments, including the discussion topic(s) that will be addressed and the approximate time requested for your presentation.

FDA will try to accommodate all persons who wish to make a presentation; however, the duration of each speaker's testimony may be limited by time constraints. FDA will notify registered presenters of their scheduled presentation times. Persons registered to make an oral presentation should check in before the hearing and are encouraged to arrive early to ensure their designated order of presentation. Participants who are not present when called risk forfeiting their scheduled time. An agenda of the meeting and other background material will be made available at least 3 days before the meeting at: *http://www.fda.gov/Drugs/NewsEvents/ucm356526.htm.*

The public meeting is free and seating will be on a first-come, first-served basis. Early registration is recommended for those wishing to attend the meeting as observers or to provide testimony because seating is limited. FDA may limit the numbers of participants from individual organizations as well as total number of attendees based on space limitations. Registrants will receive confirmation once they have been accepted to attend the hearing. For those

unable to attend in person, FDA will provide a Webcast to the meeting. Additional information about the Webcast location will be posted on the Web page, *http://www.fda.gov/Drugs/NewsEvents/ucm356526.htm,* prior to December 4, 2013.

Any person requiring special accommodations to attend the hearing should direct those needs to the contact persons (see *Contact Persons*) at least 7 days in advance.

## IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Center for Drug Evaluation and Research.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see section III of this document for more details). To the extent that the conditions for the hearing as described in this document conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

## V. Request for Comments

Regardless of attendance at the public hearing, interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see *Comments*). Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management by March 4, 2014. You should annotate and organize your comments to identify the specific questions identified by the topic to which they refer. It is only necessary to send one set of comments. All comment submissions should be marked 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.*

## VI. References

The following references have been placed on display in the Division of Dockets Management (see *Comments*) 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*.

1. U.S. Environmental Protection Agency, ''Health Effects Support Document for *Acanthamoeba,''* 2003.
2. Bowman, E. K., A. A. Vass, R. Mackowski, et al., ''Quantitation of Free-Living Amoebae and Bacterial Populations in Eyewash Stations Relative to Flushing Frequency,'' *American Industrial Hygiene Association Journal,* vol. 57, pp. 626–633, 1996.

Dated: September 12, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–22646 Filed 9–17–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Center for Scientific Review Advisory Council.

*Date:* October 28, 2013.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

*Place:* National Institutes of Health, Room 3091, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Donald L. Schneider, Ph.D., Senior Advisor to the Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, (301) 435–1111, *schneidd@csr.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into NIH buildings. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846– 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 12, 2013.

**Carolyn A. Baum,**

*Program Officer, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22631 Filed 9–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, ADD Health Renewal.

*Date:* October 9, 2013.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6898, *wallsc@mail.nih.gov*.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, ZHD1 DSR–M 90 1.

*Date:* October 11, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Michele C. Hindi-Alexander, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of, Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 12, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22629 Filed 9–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Adult Psychopathology, Aging, and Emotion.

*Date:* October 1, 2013.

*Time:* 2:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vascular and Hematology Conflicts.

*Date:* October 10, 2013.

*Time:* 5:00 p.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biomedical Imaging and Engineering Area Review.

*Date:* October 11, 2013.

*Time:* 1:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.435.1049, *lij21@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 12, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22630 Filed 9–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Director's Consumer Liaison Group.

*Date:* October 17, 2013.

*Time:* 10:00 a.m. to 4:30 p.m.

*Agenda:* Biomedical Cloud Technology; Electronic Health Records; Advocate and Organizational Engagement; and Proposed Organizational Change: Division of Extramural Activities.

*Place:* National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Amy Bulman, Acting Executive Secretary, DCLG, Office of Advocacy Relations, National Cancer Institute, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, 301–496–9723, *Amy.Bulman@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 12, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22632 Filed 9–17–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2013–0064]**

## Cooperative Research and Development Agreement (CRADA) Opportunity With the Department of Homeland Security for the Production and Associated Research of Purpose Bred Explosive Detection Canines

**AGENCY:** Science and Technology Directorate, Transportation Security Administration Office of Law Enforcement—Federal Air Marshal Service, Department of Homeland Security.

**ACTION:** Notice of intent.

**SUMMARY:** The Department of Homeland Security Science and Technology Directorate (DHS S&T), located in Washington, DC, and the Transportation Security Administration/Office of Law Enforcement—Federal Air Marshal Service (TSA/OLE–FAMS), specifically the Canine Training and Evaluation Section at Lackland Air Force Base in San Antonio, TX, are seeking industry collaborators to aid in continuing the use of selective breeding and data gathering to determine the most significant genetic and behavioral characteristics of explosive detection canines. The role of the industry collaborator(s) in this CRADA will be to continue breeding a colony of 8 Labrador Retrievers based on approved selective criteria, gather data based on existing Government established protocols, and to partner with other institutions to scientifically advance the selective breeding of purpose bred explosives detection canines based on existing data supplemented by the continued gathering of data associated with the observation and measurement of canine health and performance.

DHS S&T and TSA/OLE–FAMS are seeking CRADA collaborators that own or have access to the technological components for, have the technological expertise in, and have proven track records of success in the fields of: High quality husbandry for the breeding of canines; understanding, collection and analysis of quantitative behavior trait measurement; application of quantitative techniques to improve genetic lines (Inbreeding Coefficients, Estimated Breeding Values, Linkage Analysis, Selection Indexes, etc); knowledge of advanced techniques (prenatal imprinting, olfactory imprinting, maternal oriented social learning, litter oriented social learning, early environmental conditioning, self search-self reward) to ensure proper canine development and its potential epigenetic impact, and experience in preparing dogs for consignment evaluations by TSA/OLE–FAMS, and other DHS stakeholder community operational canine program evaluators.

The proposed term of the CRADA can be up to thirty-six (36) months.

**DATES:** Submit comments on or before October 18, 2013.

**ADDRESSES:** Mail comments and requests to participate to Mr. Don Roberts, (ATTN: Don Roberts, Mailing Address: S&T EXD Stop 0206, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0202).

Submit electronic comments and other data to *don.roberts@hq.dhs.gov.* The preferred method of communication for this Notice is through electronic correspondence.

**FOR FURTHER INFORMATION CONTACT:** *Information on DHS CRADAs:* Marlene Owens, (202) 254–6671.

**SUPPLEMENTARY INFORMATION:**

### Requirements

*Potential Collaborators*

1. Should possess facilities to safely provide for the care and housing of 8 adult breeding females and up to 50 puppies each year. This should include housing areas, working/search areas, exercise areas, and separate whelping/weaning areas.

2. Should have experience and knowledge in how to properly rear a dog from birth to a year of age specifically to enhance its potential to be an effective explosives detection dog.

3. Should be veterinarians or have close working relationships with veterinarians familiar with canine reproduction and maintaining the health of developing working detection dogs. This should include veterinary expertise in screening for genetic faults that would preclude such dogs from being future working dogs (hip structure, elbow structure, no ocular anomalies or other genetic disease known to impact this breed).

4. Should be able to demonstrate their involvement and understanding in current behavioral canine research and be able to adapt their rearing schemes based on DHS S&T sponsored research by other academic institutions.

5. Should be able to demonstrate familiarity with and the ability to conduct ongoing behavioral testing of developing canines in the context of their potential to be working explosives detection dogs.

6. Should be able to demonstrate the skill and knowledge required to perform advanced genetic analysis on this population of dogs (Estimated Breeding Values, Linkage Analysis, Inbreeding Coefficients, Selection Indexes, Quantitative Genetic analysis, Molecular Genetic analysis).

7. Should be able to demonstrate knowledge of and the ability to maintain computer databases to track all data associated with this population.

*DHS S&T/TSA/OLE–FAMS Role (includes but not limited to):*

1. Provide existing data in the form of paper record and/or database information on over 500 dogs bred since 2002;

2. Provide TSA subject matter experts to demonstrate, coordinate, and educate on how prior data was collected;

3. Provide previously written reports that suggest new and improved methodology of collecting future canine behavior data; and

4. Provide 8 breeding female Labrador Retrievers from proven stock of detection canines.

*Period of Performance:* 36 months from date of Agreement.

*Selection Criteria*

DHS S&T/TSA/OLE–FAMS reserves the right to select CRADA collaborators for all, some, or none of the proposals in response to this notice. DHS S&T/TSA/OLE–FAMS will provide no funding for reimbursement of proposal development costs. Proposals (or any other material) submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified.

DHS S&T/TSA/OLE–FAMS will select proposals at their sole discretion on the basis of:

1. How well the proposal communicates the collaborators' understanding of and ability to meet the CRADAs goals and proposed timeline.

2. How well the proposal addresses the following criteria:

a. Capability of the collaborator to provide equipment, materials, and personnel for the proposed effort.

b. Capability of the collaborator to meet the requirements for canine development, behavioral testing, data analysis, and submission of supporting data and documents fulfilling the stated requirements.

c. Preliminary data or results which support the requirements outlined above.

Participation in this CRADA does not imply the future purchase of any materials, equipment, or services from the collaborating entities, and non-Federal CRADA participants will not be excluded from any future DHS S&T/TSA/OLE–FAMS procurements based solely on their participation in this CRADA.

**Authority:** CRADAs are authorized by the Federal Technology Transfer Act of 1986, as amended and codified by 15 U.S.C. 3710a.

DHS, as an executive agency under 5 U.S.C. 105, is a Federal agency for the purposes of 15 U.S.C. 3710a and may enter into a CRADA. DHS delegated the authority to conduct CRADAs to the Science and Technology Directorate and its laboratories.

Dated: September 12, 2013.

**Stephen Hancock,**

*Director, Public Private Partnerships.*

[FR Doc. 2013–22639 Filed 9–17–13; 8:45 am]

**BILLING CODE 9110–9F–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2013–0021]**

### Privacy Act of 1974; Department of Homeland Security/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records.'' This system of records allows the Department of Homeland Security/U.S. Customs and Border Protection to collect and maintain records on publicly available aircraft and airport data provided by the Federal Aviation Administration (FAA), requests from law enforcement about suspects, tips from the public, and recordings of event and operations data in a watch log or event tracking log. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

*Dates And Comments:* Submit comments on or before October 18, 2013. This new system will be effective October 18, 2013.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2013–0021 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Laurence Castelli, (202) 325–0280, Privacy Officer, U.S. Customs and Border Protection, Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) proposes to establish a new DHS system of records titled, ''DHS/CBP—019 Air and Marine Operations Surveillance System (AMOSS) System of Records.''

This System of Records Notice (SORN) is being published because AMOSS stores personally identifiable information in a system of records. AMOSS is a sophisticated radar processing system that supports the concerted and cooperative effort of air, land, and sea vehicles; field offices; and command and control centers staffed by law enforcement officers (LEO), detection enforcement officers (DEO), pilots, crew, and Air and Marine Operations Center (AMOC) support staff in monitoring approaches to the U.S. border to detect illicit trafficking and direct interdiction actions, as appropriate. AMOSS also supports domestic operations in conjunction with other domestic law enforcement agencies by tracking domestic flights, as well as providing air traffic monitoring for air defense purposes. By processing a collection of external data imposed over a zooming-capable screen, AMOSS provides a real-time picture of air activity over a wide portion of North America, thus allowing system operators to discriminate between normal and suspicious air, ground, and marine vehicle movement. Much of the external data processed by AMOSS does not contain Personally Identifiable Information (PII) and is supplied to AMOSS by means of networked external sources. For instance, global positioning systems (GPS) from CBP vehicles or law enforcement investigations, maps, datasets from radar plot data, track data, and flight plan data are all incorporated to enhance the system operator's ability to differentiate between normal and suspicious aviation movement.

AMOSS collects PII principally from the following sources:

(1) Aircraft registration and owner information, which is downloaded to AMOSS weekly from the publicly available Federal Aviation Administration (FAA) Registration Database (DOT/FAA–801—Aircraft Registration System (April 11, 2000, 65 FR 19518));

(2) Airport manager contact information, which is contained in a larger download of airport and aeronautical navigation data obtained from the FAA National Flight Data Center Web site (DOT/FAA- 847—Aviation Records on Individuals (November 9, 2010, 75 FR 68849));

(3) Suspect information entered into the AMOC watch or event track logs received from other CBP personnel or law enforcement agencies; and

(4) Information from members of the public who call in to report suspicious activity to a tip line.

The majority of the PII contained in AMOSS is publicly available data, which AMOSS downloads from the FAA Registration Database. The FAA Registration Database contains airport and runway information, aircraft registration (ownership) information on U.S. registered aircraft, flight plan/route information, special use airspace identification, and navigation aids identification. The information that AMOSS extracts from the FAA Registration Database contains PII in the form of aircraft owner names and addresses and airport manager names and phone numbers.

AMOSS also contains event and operations data, which DEOs or other AMOC staff record in a watch log or event tracking log. The watch log contains records of operational activities on the floor of the AMOC. The event tracking log contains active event logs of all investigative and law enforcement actions in response to suspicious activity. The watch log and event tracking log are similar to a police blotter or journal and can include

intelligence/suspect records on vehicles, vessels, and aircraft, as well as airport manager names and phone numbers. In addition, the watch log and event tracking log may contain PII of suspects who are encountered when the DEOs are investigating suspicious air, ground, and marine vehicle movement, including names, addresses, phone numbers, drivers licenses, and, in some cases, Social Security Numbers (SSN) of suspects. The watch log and event tracking log may also contain PII from members of the public who call in to a tip line to report tips on suspicious activity, including names and phone numbers. Consistent with DHS's information sharing mission, information stored in AMOSS may be shared with other DHS components when CBP has determined that the component has a need to know the information. In addition to CBP, AMOSS has users from various DHS components including the U.S. Immigration and Customs Enforcement (ICE), U.S. Secret Service (USSS), and the Transportation Security Administration (TSA). Based on a need to know, CBP may share data from AMOSS with other parts of DHS including, but not limited to, the DHS National Operations Center, U.S. Coast Guard (USCG), and the Office of Intelligence and Analysis (I&A). Information is transmitted via secure connections between components.

When appropriate, information in AMOSS may be included in a Memorandum of Information Received (MOIR) in TECS (DHS/CBP–011—U.S. Customs and Border Protection TECS (December 19, 2008 73 FR 77778)) and shared as a suspicious activity report, pursuant to DHS/ALL–031—Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

DHS may share with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies when DHS determines that the receiving component has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. AMOSS also has users from the Department of Defense (DOD), including the North American Aerospace Defense Command (NORAD). NORAD users include members of the Canadian Armed Forces. These users use AMOSS to identify and track aircraft that are transiting, entering, and departing from the United States. Access for these users is restricted through the use of role-based assignments within AMOSS.

As part of the AMOC's law enforcement and general aviation security mission, non-PII aircraft positional data may be shared with other foreign, federal, state, and local agencies. Upon request, AMOSS also supports domestic operations in conjunction with other domestic law enforcement agencies by tracking domestic flights.

The collection of information in AMOSS is authorized primarily by the following authorities: 6 U.S.C. 202; the Tariff Act of 1930, as amended, including 19 U.S.C. 1590; 19 U.S.C. 2075(b)(2)(B)(3); the Immigration and Nationality Act (INA), 8 U.S.C. 1101, *et seq.,* including 8 U.S.C. 1103, 1225, and 1324; and the Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208; Presidential Directive 47/Homeland Security Presidential Directive 16 (NSPD–47/HSPD–16); and DHS Delegation No. 7010.3 (May 11, 2006).

DHS is issuing a Notice of Proposed Rulemaking, elsewhere in the **Federal Register**, to exempt this system of records from certain provisions of the Privacy Act. CBP will, however, consider individual requests to determine whether or not information may be released. Moreover, no exemption shall be asserted with respect to information maintained in the system as it relates to aircraft data collected from the FAA, aside from the accounting of disclosures with law enforcement and/or intelligence agencies pursuant to the routine uses in this SORN. This newly established system will be included in DHS's inventory of record systems.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/CBP–019 Air and Marine Operations Surveillance System (AMOSS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

### System of Records

DHS/CBP—019.

#### SYSTEM NAME:

DHS/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS).

#### SECURITY CLASSIFICATION:

Unclassified, sensitive, and law enforcement sensitive.

#### SYSTEM LOCATION:

Records are maintained at the Air and Marine Operations Center (AMOC) in Riverside, California.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

AMOSS contains information on aircraft owners who have registered their aircraft with the Federal Aviation Administration (FAA), as well as airport managers. AMOSS contains information about individuals suspected of violating the law or presenting a threat to the United States. AMOSS also contains information about individuals mentioned in tips from members of the public who call in to report suspicious activity to a tip line or from law enforcement, as well as contact information for those members of the public or law enforcement.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The records in AMOSS are comprised of the following information:

FAA DATA:

- Aircraft registration (ownership) information on U.S. registered aircraft, including registrant name and address, aircraft type, and aircraft identification numbers;
- Airport information, including manager name and contact information;
- Runway information;
- Flight plan/route information;
- Special use airspace identification; and
- Navigation aids identification.

EVENT AND OPERATIONS DATA:

- Watch log records of operational activities on the floor of the AMOC;
- Event tracking log information on suspects, including: Names, addresses, phone numbers, drivers licenses, Social Security Numbers, TECS case numbers, information identifying conveyances

(including vehicle type, tail numbers, license plate numbers, etc.) and remarks by Detection Enforcement Officers (DEO);

- Event tracking log information on members of the public who call in to a tip line, including: Names, and phone numbers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The collection of information in AMOSS is authorized by the following authorities: 6 U.S.C. 202; the Tariff Act of 1930, as amended, including 19 U.S.C. 1590; 19 U.S.C. 2075(b)(2)(B)(3); the Immigration and Nationality Act (''INA''), 8 U.S.C. 1101, *et seq.,* including 8 U.S.C. 1103, 1225, and 1324; the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, Division C; Presidential Directive 47/Homeland Security Presidential Directive 16 (NSPD–47/HSPD–16); and DHS Delegation No. 7010.3 (May 11, 2006).

**PURPOSE(S):**

Information in AMOSS is used to assist CBP in identifying aircraft, vessels, or vehicles illegally entering or attempting to enter the United States, making suspicious movements, or otherwise participating in the smuggling or transshipment of narcotics, illegal contraband, illegal aliens, illegal currency, terrorist activities, or other suspected or confirmed violations of U.S. customs and/or immigration laws. Information in AMOSS is also used to assist other foreign, federal, state, and local agencies for law enforcement and general aviation security purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To federal and foreign government intelligence or counterterrorism agencies or components when DHS becomes aware of an indication of a threat or potential threat to national or international security, or to assist in anti-terrorism efforts.

I. To an organization or person in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, or when the information is relevant to the protection of life, property, or other vital interests of a person.

J. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation.

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil or criminal discovery, litigation, or settlement negotiations, or in response to a subpoena from a court of competent jurisdiction.

L. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when CBP is aware of a need to use relevant data for purposes of testing new technology and systems designed to enhance border security or identify other violations of law.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on

magnetic disc, tape, digital media and DVD/CD–ROM.

**RETRIEVABILITY:**

Records may be retrieved by name or other (alphanumeric) personal identifier.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

CBP has established a 15-year retention schedule beginning on the last date of the record entry or update, and plans to submit this schedule to NARA for approval.

**SYSTEM MANAGER AND ADDRESS:**

Director, Information Systems, U.S. Customs and Border Protection, Office of Air and Marine, Air and Marine Operations Center, Riverside, California.

**NOTIFICATION PROCEDURE:**

The Secretary of Homeland Security has exempted portions of AMOSS from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. CBP will, however, consider individual requests to determine whether or not information may be released. Moreover, no exemption shall be asserted with respect to information maintained in the system as it relates to aircraft data collected from the FAA, aside from the accounting of disclosures with law enforcement and/or intelligence agencies pursuant to the routine uses in this SORN. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the CBP FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Records containing PII are obtained from the following sources:

(1) Aircraft registration and owner information from the publicly available FAA Registration Database;

(2) Airport manager contact information, which is contained in a larger download of airport and aeronautical navigation data obtained from the FAA National Flight Data Center;

(3) Suspect information entered into the AMOC watch or event track logs received from other CBP personnel or law enforcement agencies; and

(4) Information from members of the public who call in to report suspicious activity to a tip line.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

No exemption shall be asserted with respect to aircraft data collected from the FAA that is maintained in AMOSS. However, this FAA data may be shared with law enforcement and/or intelligence agencies pursuant to the above routine uses. The Privacy Act requires DHS maintain an accounting of the disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement or intelligence activity. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim an exemption from subsections (c)(3); (e)(8); and (g)(1) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from subsection (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted all other AMOSS data (non-FAA source data) from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this non-FAA source data in AMOSS from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Dated: August 6, 2013.

**Jonathan R. Cantor,**

*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2013–22690 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before November 18, 2013, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

*OMB Number:* 1651–0003.

*Form Numbers:* CBP Forms 7512 and 7512A.

*Current Actions:* This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

*Type of Review:* Extension (without change).

*Abstract:* CBP Forms 7512 and 7512A are used by carriers and brokers to serve as the manifest and transportation entry for cargo moving under bond within the United States. The data on the form is used by CBP to identify the carrier who initiated the bonded movement and to document merchandise moving in-bond. These forms provide documentation that CBP uses for enforcement, targeting, and protection of revenue. Forms 7512 and 7512A collect information such as the names of the importer and consignee; a description of the merchandise moving in-bond; and the ports of lading and unlading. These forms are provided for in 19 CFR 18.11, 19 CFR 18.20, 19 CFR 18.25, and 19 CFR 122.92 and can be found at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 6,200.

*Estimated Number of Average Responses per Respondent:* 871.

*Estimated Number of Total Annual Responses:* 5,400,001.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 896,400 hours.

Dated: September 13, 2013.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2013–22669 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Barrios Measurement Services LLC, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Barrios Measurement Services LLC, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Barrios Measurement Services LLC, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of June 5, 2013.

**DATES:** *Effective Dates:* The approval of Barrios Measurement Services LLC, as commercial gauger became effective on June 5, 2013. The next triennial inspection date will be scheduled for June 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Barrios Measurement Services LLC, 228 West 133rd St., P.O. Box 275, Cut Off, LA 70345, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 10, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–22673 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Altol Petroleum Product Service, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Altol Petroleum Product Service, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Altol

Petroleum Product Service, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of February 25, 2013.

**DATES:** *Effective Dates:* The approval of Altol Petroleum Product Service, as commercial gauger became effective on February 25, 2013. The next triennial inspection date will be scheduled for February 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Altol Petroleum Product Service, Parque Industrial Sabanetas, Edificio M–1380–01–02, Ponce, PR 00731, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 10, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–22659 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of July 17, 2013.

**DATES:** *Effective Dates:* The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on July 17, 2013. The next triennial inspection date will be scheduled for July 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 3001 SW 3rd Ave, Suite #8, Fort Lauderdale, FL 33315, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 10, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–22683 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Altol Petroleum Product Service, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Altol Petroleum Product Service, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Altol Petroleum Product Service, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of March 4, 2013.

**DATES:** *Effective Dates:* The approval of Altol Petroleum Product Service, as commercial gauger became effective on March 4, 2013. The next triennial inspection date will be scheduled for March 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Altol Petroleum Product Service, Calle Gregorio Ledesma HN–55 Urb. Levittown, Toa Baja, PR 00949, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/linkhandler/*

*cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 10, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–22658 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt, LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt, LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt, LP, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of June 12, 2013.

**DATES:** *Effective Dates:* The accreditation and approval of Saybolt, LP, as commercial gauger and laboratory became effective on June 12, 2013. The next triennial inspection date will be scheduled for June 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt, LP, 3915 Saw Mill Run Blvd., Pittsburgh, PA 15227, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 10, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–22656 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### U.S. Customs and Border Protection 2013 East Coast Trade Symposium: ''Increasing Economic Competitiveness Through Global Partnership and Innovation''

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Notice of Trade Symposium.

**SUMMARY:** This document announces that CBP will convene only one Symposium this year, the East Coast Trade Symposium, which will be held in Washington, DC, on Thursday, October 24 and Friday, October 25, 2013. The East Coast Trade Symposium will feature panel discussions involving agency personnel, members of the trade community and other government agencies, on the agency's role in international trade initiatives and programs. This year marks our thirteenth year convening the Trade Symposium. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

**DATES:** Thursday, October 24, 2013, (opening remarks and general sessions, 8:00 a.m.–6:00 p.m.). Friday, October 25, 2013, (opening remarks, breakout sessions, and closing remarks, 8:30 a.m.–1:00 p.m.).

**ADDRESSES:** The CBP 2013 East Coast Trade Symposium will be held at the Washington Hilton Hotel, at 1919 Connecticut Avenue NW., Washington, DC 20009, in the Columbia 5–12 room.

**FOR FURTHER INFORMATION CONTACT:** The Office of Trade Relations at (202) 344–1440, or at *tradeevents@dhs.gov.* To obtain the latest information on the Symposium and to register online, visit the CBP Web site at *http://www.cbp.gov/xp/cgov/trade/trade_outreach/2013_trade_symp/.* Requests for special needs should be sent to the Office of Trade Relations at *tradeevents@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** CBP will be holding one Trade Symposium this year and it will be held on the East Coast in Washington, DC. Due to sequestration CBP will not be holding a West Coast Trade Symposium in 2013. This document announces that CBP will convene this year's East Coast Trade Symposium on Thursday, October 24 and Friday, October 25, 2013. The theme for the 2013 East Coast Trade Symposium will be ''Increasing Economic Competitiveness Through Global Partnership and Innovation.'' The format of this year's East Coast Trade Symposium will be held with general sessions and breakout sessions. Discussions will be held regarding CBP's role in international trade initiatives and partnerships.

The agenda for the 2013 East Coast Trade Symposium and the keynote speakers will be announced at a later date on the CBP Web site (*http://www.cbp.gov*). Registration is now open. The registration fee is $108.00 per person. Interested parties are requested to register early, as space is limited. All registrations must be made online at the CBP Web site (*http://www.cbp.gov/xp/cgov/trade/trade_outreach/2013_trade_symp/*) and will be confirmed with payment by credit card only.

Due to the overwhelming interest to attend past symposiums, each company is requested to limit its company's registrations to no more than three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, any additional names submitted for registration will automatically be placed on a waiting list.

Hotel accommodations will be announced at a later date on the CBP Web site (*http://www.cbp.gov*).

Date: September 12, 2013.

**Maria Luisa Boyce,**

*Senior Advisor for Private Sector Engagement, Executive Director, Office of Trade Relations, Office of the Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2013–22657 Filed 9–17–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

**[Docket No. ONRR–2012–0003 DS63600000 DR2PS0000.PX8000 134D0102R2]**

### U.S. Extractive Industries Transparency Initiative Public Outreach

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the public outreach sessions of the U.S. Extractive Industries Transparency Initiative (USEITI) candidacy application. By this notice, Interior is providing the public advance notice of the opportunity to comment on the application between September 18, 2013, and November 4, 2013. Comments may be provided in writing or in person at the public outreach sessions or public webinar, or online at *www.doi.gov/eiti*.

**DATES:** The public outreach sessions will be from 4:00 p.m.–7:00 p.m. local times and webinar 3:00 p.m.–5:00 p.m. local time. Dates and locations are:

Session 1—September 24, 2013, New Orleans, Louisiana Public Outreach, Offices of the Bureau of Ocean Energy Management & Bureau of Safety and Environmental Enforcement, Elmwood Towers, 1201 Elmwood Park Boulevard, Room 125, New Orleans, Louisiana 70123;

Houston, Texas Public Outreach, Houston Firefighters' Relief and Retirement Fund, 4225 Interwood North Parkway, Houston, Texas 77032;

Session 2—October 2, 2013, Public Outreach Webinar, to view presentation via WebEx at *http://bit.ly.ZQ9aQP* and dial into a moderated conference line at 888–456–0321 (Passcode: EITI);

Session 3—October 10, 2013, Pittsburgh, Pennsylvania Public Outreach, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, 2nd Floor, Pittsburgh, Pennsylvania 15220;

Session 4—October 22, 2013, Denver, Colorado Public Outreach, Office of Natural Resources Revenue, 6th & Kipling Street Denver Federal Center, Building 85–A, Denver, Colorado 80225; and Anchorage, Alaska, Public Outreach, Offices of Bureau of Ocean Energy Management & Bureau of Safety and Environmental Enforcement, Centerpoint Financial Center, 3801 Centerpoint Drive, Suite 100, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Rosita Compton Christian, USEITI Secretariat; 1849 C Street NW., MS 4211, Washington DC 20240. You may also contact the USEITI Secretariat via email at *useiti@ios.doi.gov,* by phone at 202–208–0272 or by fax at 202–513–0682.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of the Interior established the USEITI Advisory Committee (Committee) on July 26, 2012, to serve as the initial USEITI multi-stakeholder group. More information about the Committee, including its charter, can be found at *www.doi.gov/eiti/faca*.

The Public Outreach sessions will share, explain, and obtain public feedback for the MSG on the draft USEITI Candidacy Application which can be found at *http://www.doi.gov/eiti/FACA/sept-meeting.cfm*. These sessions will include the EITI candidacy requirements, implementation requirements, and the benefits of implementing EITI in the United States.

We encourage stakeholders and members of the public to participate in the public comment period held from September 15–November 1, 2013, to gather feedback on the draft USEITI Candidacy Application. During the September 15–November 1 public comment period, three public outreach sessions and a public webinar will be held as listed previously in this notice. Further details regarding these sessions will be provided in advance online at *www.doi.gov/eiti*. The candidacy application and comments about it can be made online at *www.doi.gov/eiti*.

*Background:* In September 2011, President Barack Obama announced the United States' commitment to participate in the Extractive Industries Transparency Initiative. EITI is a signature initiative of the U.S. National Action Plan for the international Open Government Partnership and offers a voluntary framework for governments and companies to publicly disclose in parallel the revenues paid and received for extraction of oil, gas, and minerals owned by the state. The design of each framework is country-specific and is developed through a multi-year, consensus-based process by a multi-stakeholder group comprised of government, industry, and civil society representatives.

Dated: September 12, 2013.

**Amy Holley,**

*Chief of Staff—Policy, Management and Budget.*

[FR Doc. 2013–22642 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–T2–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2013–N207; FXES11130100000–134–FF01E00000]**

### Endangered and Threatened Wildlife and Plants; Recovery Permit Application

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct activities with the purpose of enhancing the survival of an endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

**DATES:** To ensure consideration, please send your written comments by October 18, 2013.

**ADDRESSES:** Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE. 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife

species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Application Available for Review and Comment**

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

**Permit Number: TE–15572B**

*Applicant: Patricia Baird, Long Beach, California*

The applicant requests a new permit to take (collect feathers, eggshell fragments, and viable eggs) the least tern (*Sternula antillarum*) on the island of Hawaii in conjunction with genetic research for the purpose of identifying the subspecies nesting on the island, determining if it is an endangered subspecies, and enhancing the species' survival.

**Public Availability of Comments**

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2013.

**Hugh Morrison,**

*Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–22661 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2013–N195; FXES11130100000–134–FF01E00000]**

### Endangered Species; Issuance of Permits

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

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act).

**ADDRESSES:** Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

**FOR FURTHER INFORMATION CONTACT:** Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

**SUPPLEMENTARY INFORMATION:** We have issued the following permits to conduct activities with endangered species in response to recovery and interstate commerce permit applications we received under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*). These permits were issued between January 1 and June 30, 2013. Each permit listed below was issued only after we determined that it was applied for in good faith; that granting the permit would not be to the disadvantage of the listed species; that the proposed activities were for scientific research or would benefit the recovery or the enhancement of survival of the species, and that the terms and conditions of the permit were consistent with the purposes and policy set forth in the Act.

| Applicant name | Permit No. | Date issued | Date expires |
|---|---|---|---|
| Andersen Air Force Base | 84876A | 1/18/2013 | 1/17/2017 |
| Cossell, Lori L. | 95648A | 3/22/2013 | 3/21/2014 |
| Cowlitz Indian Tribe | 98069A | 5/13/2013 | 5/12/2017 |
| Department of Marine And Wildlife Resources; American Samoa | 094808 | 1/25/2013 | 1/24/2016 |
| Haleakala National Park | 014497 | 4/15/2013 | 2/11/2016 |
| Hawaii Wildlife Fund | 829250 | 5/15/2013 | 5/14/2017 |
| Hicks, Tyler Leon | 99474A | 5/8/2013 | 5/7/2017 |
| Naval Facilities Engineering Command Pacific | 096741 | 4/19/2013 | 4/18/2016 |
| Oregon Department Of Fish And Wildlife | 818627 | 5/3/2013 | 5/2/2018 |
| Ridgefield National Wildlife Refuge | 97901A | 5/13/2013 | 12/31/2017 |
| USDA, APHIS, Wildlife Services | 97903A | 5/13/2013 | 5/12/2017 |
| U.S. Geological Survey, WERC | 145562 | 5/8/2013 | 5/7/2016 |
| Washington Department of Fish And Wildlife | 98686A | 5/13/2013 | 5/12/2017 |
| Vanderwerf, Eric A. | 149068 | 2/20/2013 | 2/19/2016 |

**Availability of Documents**

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

We provide this notice under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 10, 2013.

**Hugh Morrison,**

*Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–22681 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[F–19148–35; LLAK940000–L14100000–HY0000–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Arctic Slope Regional Corporation. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.). The lands are in the vicinity of Umiat, Alaska, and are located in:

**Umiat Meridian, Alaska**

T. 1 S., R. 8 E.,
Secs. 19 to 24, inclusive.
Containing 3,659.85 acres.
T. 1 S., R. 9 E.,
Secs. 19 to 27, inclusive;
Secs. 34, 35, and 36.
Containing 7,628.24 acres.
Aggregating 11,288.09 acres.

Notice of the decision will also be published once a week for four consecutive weeks in the *Arctic Sounder.*

**DATES:** Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 18, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

**Joe J. Labay,**

*Land Transfer Resolution Specialist, Division of Lands and Cadastral.*

[FR Doc. 2013–22663 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[F–14885–A, F–14885–A2; LLAK940000–L14100000–HY0000–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Qanirtuuq, Inc. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Qanirtuuq, Inc. The lands are in the vicinity of Quinhagak, Alaska, and are located in:

**Seward Meridian, Alaska**

T. 5 S., R. 73 W.,
Sec. 28.
Containing approximately 20 acres.
T. 6 S., R. 73 W.,
Secs. 4, 7, and 18.
Containing approximately 1,230 acres.
Aggregating approximately 1,250 acres.

Notice of the decision will also be published once a week for four consecutive weeks in *The Delta Discovery.*

**DATES:** Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 18, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

**FOR FURTHER INFORMATION, CONTACT:** The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@blm.gov*. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

**Joe J. Labay,**

*Land Transfer Resolution Specialist, Division of Lands and Cadastral.*

[FR Doc. 2013–22665 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCON06000 L1610000.DP0000]**

### Second Call for Nominations for the Rio Grande Natural Area Commission, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to request public nominations for a vacancy on the Rio Grande Natural Area Commission (Commission). The nine-member Commission advises the Secretary of the Interior through the Bureau of Land Management (BLM) with respect to the Rio Grande Natural

Area (Natural Area) and on matters concerning the preparation and implementation of a management plan relating to non-Federal land in the Natural Area. The BLM is issuing a second call for nominations to solicit more interest in the vacant position representing the general public. Applicants who have already submitted nomination forms will still be considered for the vacancy.

**DATES:** Submit nomination packages on or before October 18, 2013.

**ADDRESSES:** Send completed Council nominations to Kyle Sullivan, Public Affairs Specialist, BLM Front Range District Office, 3028 East Main St., Cañon City, CO 81212.

**FOR FURTHER INFORMATION CONTACT:** Kyle Sullivan, Public Affairs Specialist, BLM Front Range District Office (see **ADDRESSES** above). Phone: (719) 269–8553. Email: *ksullivan@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Commission is a statutory advisory committee established under Section 4 of the Rio Grande Natural Area Act of 2006 (16 U.S.C. 460rrr–2). The Commission shall be composed of nine members appointed by the Secretary, of whom:

1. One member shall represent the Colorado State Director of the BLM;
2. One member shall be the manager of the Alamosa National Wildlife Refuge, ex officio;
3. Three members shall be appointed based on the recommendation of the Governor of Colorado, among whom:
   a. One member shall represent Colorado Parks and Wildlife;
   b. One member shall represent the Colorado Division of Water Resources; and
   c. One member shall represent the Rio Grande Water Conservation District.
4. Four members shall:
   a. Represent the general public;
   b. Be citizens of the local region in which the Natural Area is established; and
   c. Have knowledge and experience in fields of interest relating to the preservation, restoration and use of the Natural Area.

Individuals may nominate themselves or others. The BLM will evaluate nominees based on their education, training, experience and knowledge of the geographical area the Commission serves. Nominees should demonstrate a commitment to collaborative resource decision-making. The following must accompany all nominations:

1. Letters of reference from represented interests or organizations;
2. A completed background information nomination form; and
3. Any other information that addresses the nominee's qualifications.

The Obama Administration prohibits individuals who are currently federally-registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils. Nomination forms may be downloaded from the Rio Grande Natural Area Commission Web site: *www.blm.gov/co/st/en/fo/slvfo/rio_grande_natural.html.*

The BLM's San Luis Valley Field Office will review the nomination packages in coordination with the Governor of Colorado before forwarding recommendations to the Secretary, who will make the appointments. The Commission shall be subject to the FACA, 5 U.S.C. App. 2; and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*

**Authority:** 43 CFR 1784.4–1.

**Helen M. Hankins,**

*BLM Colorado State Director.*

[FR Doc. 2013–22664 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCON01000 L14300000.ES0000; COC–73959]**

### Notice of Realty Action: Recreation and Public Purposes Act Classification and Lease/Conveyance of Public Land, La Plata County, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance to the City of Durango, under the provisions of the Recreation and Public Purposes Act (R&PP), as amended, and the Taylor Grazing Act, approximately 3.859 acres of public land in La Plata County, Colorado. The City of Durango proposes to use the land for construction of a storm water treatment facility to filter oils and other toxins found in storm water before discharging it into the Animas River.

**DATES:** Interested parties may submit written comments regarding the proposed classification for lease and subsequent conveyance until November 4, 2013.

**ADDRESSES:** Please submit your written comments to the Associate Field Manager, BLM Tres Rios Field Office, 15 Burnett Court, Durango, CO 81301. Comments received in electronic form such as email or facsimile will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jardine, Realty Specialist, by telephone 970–385–1224 or at the address above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 315(f)) and Executive Order No. 6910, the following described public land in La Plata County, Colorado, has been examined and found suitable for classification and lease with subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

**New Mexico Principal Meridian**

T. 35 N., R. 9 W.,
  Sec. 16, a metes and bound parcel in lot 11, in the incorporated limits of the City of Durango, Colorado, La Plata County Parcel Number 56651630029, described as follows: Beginning at corner No. 1, from which the northeast corner of the southwest quarter of section 16 bears N. 0° 31′ W., 393.1 ft.

From corner No. 1, by metes and bounds,
  S. 87° 52′ W., 182.14 feet, along the south right-of-way line of 32nd Street to corner No. 2, thence along a curve to the left, the radius of which is 788.57 feet, 262.42 feet, to corner No. 3;
  S. 68° 48′ W., 51.24 ft., to corner No. 4;
  S. 0° 28′ E., 288.37 ft., to corner No. 5;
  S. 89° 07′ E., 498.8 ft., to corner No. 6;
  N. 1° 53′ W., 359.01 ft., to corner No.1, the place of beginning.

The area described contains approximately 3.859 acres in La Plata County, Colorado.

In accordance with the R&PP Act, the City of Durango filed an R&PP application to develop the above-described land as a storm water treatment facility to filter oils and other toxins found in storm water before discharging it into the Animas River. The BLM conducted a Phase I Environmental Site Assessment on

April 29, 2013. No hazardous substances, petroleum products or recognized environmental conditions were identified on the parcel; no further inquiry is needed to assess Recognized Environmental Conditions.

The land is not needed for any Federal purposes. The lease and subsequent conveyance is consistent with the BLM San Juan/San Miguel Record of Decision and Approved Resource Management Plan dated September 5, 1985, and is in the public interest. The BLM has prepared an environmental assessment analyzing the City of Durango's application and the proposed development and management plans.

A conveyance will be subject to the provisions of the R&PP Act and applicable regulations prescribed by the Secretary of the Interior, and the following reservation to the United States:

A reservation to the United States for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

A conveyance will be subject to the following terms and conditions:

1. All valid existing rights documented on the official public land records at the time of patent issuance.

2. A right-of-way across the above-described lands for electrical power transmission or distribution line purposes granted to La Plata Electric Association, its successors or assigns, by right-of-way COC–36667 pursuant to the Act of October 21, 1976 (90 Stat. 2776, 43 U.S.C. 1761).

3. A right-of-way across the above-described lands for electrical power transmission or distribution line purposes granted to La Plata Electric Association, its successors or assigns, by right-of-way COC–56560 pursuant to the Act of October 21, 1976 (90 Stat. 2776, 43 U.S.C. 1761).

4. A right-of-way across the above-described lands for a road granted to the City of Durango, its successors or assigns, by right-of-way COC–57658 pursuant to the Act of October 21, 1976 (90 Stat. 2776, 43 U.S.C. 1761).

5. Any other valid rights-of-way that may exist at the time of conveyance.

6. An indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the land.

7. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), a notice that states that the above-described parcel was examined and no evidence was found to indicate that any hazardous substances were stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

Upon publication of this notice in the **Federal Register**, the parcel will be segregated from all other forms of appropriation under the public land laws, except for lease and subsequent conveyance under the R&PP Act. Mineral rights are held by third parties and the above segregation does not apply to them.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development as a storm water treatment facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested persons may also submit comments on the application, including the notification of the BLM of any encumbrances or other claims relating to the parcel, and regarding the specific use proposed in the application and plan of development; whether the BLM followed proper administrative procedures in reaching the decision to lease and convey the land under the R&PP Act; or any other factors not directly related to the suitability of the land for a storm water treatment facility.

Before including your address, phone number, email address, or any 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.

Any adverse comments will be reviewed by the BLM Colorado State Director. In the absence of any adverse comments, this realty action will become effective on November 18, 2013.

The land will not be offered for lease and subsequent conveyance until after the classification becomes effective.

**Authority:** 43 CFR 2741.5.

**Helen M. Hankins,**

*BLM Colorado State Director.*

[FR Doc. 2013–22662 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–NERO–CEBE–13802; PPNECEBE00, PPMPSPD1Z.Y00000]**

### Request for Nominations for the Cedar Creek and Belle Grove National Historical Park Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of request for nominations for the Cedar Creek and Belle Grove National Historical Park Advisory Commission.

**SUMMARY:** The National Park Service, U.S. Department of the Interior, proposes to appoint new members to the Cedar Creek and Belle Grove National Historical Park Advisory Commission. The Site Manager, Cedar Creek and Belle Grove National Historical Park, is requesting nominations for qualified persons to serve on the Commission.

**DATES:** Nominations must be postmarked no later than November 15, 2013.

**ADDRESSES:** Nominations or requests for further information should be sent to Amy Bracewell, Site Manager, Cedar Creek and Belle Grove National Historical Park, 8693 Valley Pike, P.O. Box 700, Middletown, Virginia 22645, telephone (540) 868–9176, email: *amy_bracewell@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Public Law 107–373 established Cedar Creek and Belle Grove National Historical Park. Section 9(a) of that law established the Advisory Commission. The Advisory Commission was designated by Congress to provide advice to the Secretary of the Interior on the preparation and implementation of the park's general management plan and to advise on land protection.

Nominations are needed to represent the following categories: one member to represent the local government of Warren County; one member to represent the local government of Middletown; one member to represent the local government of Frederick County; one member to represent the Cedar Creek Battlefield Foundation; one member to represent Belle Grove, Incorporated; one member to represent the National Trust for Historic Preservation; one member to represent the Shenandoah Valley Battlefields Foundation; two members to represent the private landowners within the park; and one member to represent a citizen interest group.

*Submitting Nominations:*

Nominations should be typed and must include each of the following:

A. Brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the Commission.

B. Resume or curriculum vitae.

C. One (1) letter of endorsement from the unit of government or organization being represented, or, in the case of a private landowner, one (1) letter of reference.

The Commission consists of 15 members, each appointed by the Secretary of the Interior, as follows: (a) 1 representative from the Commonwealth of Virginia; (b) 1 representative each from the local governments of Strasburg, Middletown, Frederick County, Shenandoah County, and Warren County; (c) 2 representatives of private landowners within the Park; (d) 1 representative from a citizen interest group; (e) 1 representative from the Cedar Creek Battlefield Foundation; (f) 1 representative from Belle Grove, Incorporated; (g) 1 representative from the National Trust for Historic Preservation; (h) 1 representative from the Shenandoah Valley Battlefields Foundation; (i) 1 ex-officio representative from the National Park Service; (j) one 1 ex-officio representative from the United States Forest Service. Each member shall be appointed for a term of three years and may be reappointed for not more than two successive terms. A member may serve after the expiration of that member's term until a successor has taken office. The Chairperson of the Commission shall be elected by the members to serve a term of one year renewable for one additional year.

Members of the Commission shall serve without pay, allowances, or benefits by reason of their service on the Commission. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the Designated Federal Officer, members will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under section 5703 of Title 5 of the United States Code.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils.

All required documents must be compiled and submitted in one complete nomination package. Incomplete submissions (missing one or more of the items described above) will not be considered.

Nominations should be postmarked no later than November 15, 2013, to Amy Bracewell, Site Manager, Cedar Creek and Belle Grove National Historical Park, 8693 Valley Pike, P.O. Box 700, Middletown, Virginia 22645.

Dated: September 12, 2013.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2013–22689 Filed 9–17–13; 8:45 am]

**BILLING CODE 4310–WV–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–770]**

### Certain Video Game Systems and Wireless Controllers and Components Thereof, Commission Determination Finding No Violation of the Tariff Act of 1930

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm, with modifications, the ALJ's finding of no violation of Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (''Section 337'') in the above-referenced investigation.

**FOR FURTHER INFORMATION CONTACT:** Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On April 27, 2011, the Commission instituted the subject investigation based on a complaint filed by Creative Kingdoms, LLC of Wakefield, Rhode Island and New Kingdoms, LLC of Nehalem, Oregon (collectively, ''CK''). 76 FR 23624 (Apr. 27, 2011). The complaint alleged violations of Section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,500,917 (''the '917 patent''), 7,896,742 (''the '742 patent''), 7,850,527 (''the '527 patent''), and 6,761,637 (the '637 patent). The named respondents are Nintendo Co., Ltd., of Kyoto, Japan and Nintendo America, Inc. of Redmond, Washington (collectively, ''Nintendo''). The '637 patent was subsequently terminated from the investigation. On August 31, 2012, the ALJ issued a final ID finding no violation of section 337 by Nintendo. The ALJ found that the accused products infringe sole asserted claim 24 of the '742 patent, but that the claim is invalid for failing to satisfy the enablement requirement and the written description requirement under 35 U.S.C. 112. The ALJ found that no accused products infringe the asserted claims of the '917 patent and the '527 patent. The ALJ also found that the asserted claims of the '917 and '527 patents are invalid for failing to satisfy the enablement requirement and the written description requirement. The ALJ concluded that complainant has failed to show that a domestic industry exists in the United States that exploits the asserted patents as required by 19 U.S.C. 1337(a)(2). The ALJ did not make a finding regarding the technical prong of the domestic industry requirement with respect to the asserted patents. The ALJ also did not making a finding with respect to anticipation and obviousness of the asserted patents.

On November 6, 2012, the Commission determined to review the following issues: (1) Claim construction of the limitation ''toy wand'' of the asserted claim of the '917 patent; (2) non-infringement of the asserted claim of the '917 patent; (3) infringement of the asserted claim of the '742 patent; (4) validity of the asserted claims of the '917 and '742 patent under the enablement requirement; (5) validity of the asserted claims of the '917 and '742 patent under the written description requirement; and (6) whether the domestic industry requirement is met with respect to the '917 and '742 patents. On the same day, the Commission issued an opinion with respect to the proper claim construction of the term ''toy wand'' of the asserted claim of the '917 patent. The Commission determined to remand this case to the ALJ to determine the following issues: (a) Direct infringement of the asserted claim of the '917 patent in light of the proper construction of the term ''wand'' as set forth in the Commission opinion; (b) whether the

independently sold Wii MotionPlus and Nunchuck accessories contributorily infringe the asserted claim of the '917 and '742 patents; (c) anticipation and obviousness with respect to the asserted claim of the '917 patent; (d) obviousness with respect to the asserted claim of the '742 patent; and (e) whether CK has satisfied the technical prong of the domestic industry requirement with respect to the '917 and '742 patents, and if necessary, whether CK has satisfied the economic prong of the domestic industry requirement with respect to the '917 and 742 patent in light of the ALJ's technical prong determination.

On May 7, 2013, the ALJ issued a remand ID finding no violation of section 337. The ALJ found that (i) Respondents do not infringe claim 7 of the '917 patent; (ii) respondents do not contribute to the infringement of claim 24 of the '742 patent; (iii) the asserted claim of the '917 patent is not invalid for anticipation; (iv) the asserted claim of the '917 patent is not invalid for obviousness; (v) the asserted claim of the '742 patent is not invalid for obviousness; (vi) complainant has satisfied the technical prong of the domestic industry requirement for the '917 patent; and (vii) complainant has satisfied the technical prong of the domestic industry requirement for the '742 patent. The ALJ determined that it was unnecessary to revisit his previous finding in his final ID that complainant has not satisfied the economic prong of the domestic industry requirement for the '742 and '917 patents.

On July 8, 2013, the Commission determined to review the following issues from the remand ID: (1) Whether the accused products directly infringe the asserted claim of the '917 patent; (2) whether the independently sold Wii MotionPlus and Nunchuck accessories contributorily infringe the asserted claim of the '742 patent; (3) non-obviousness of the asserted claim of the '742 patent; and (4) whether the technical prong of the domestic industry requirement is met with respect to the '917 and '742 patents. The Commission noted that the following issues from the final ID are currently under review: (a) Whether the accused products directly infringe the asserted claim of the '742 patent; (b) validity of the asserted claims of the '917 and '742 patent under the enablement requirement; (c) validity of the asserted claims of the '917 and '742 patent under the written description requirement; and (d) whether the economic prong of the domestic industry requirement is met with respect to the '917 and '742 patents.

Having examined the record of this investigation, including the ALJ's final ID, remand ID, and the submissions of the parties, the Commission has determined to affirm, with modifications, the ALJ's finding of no violation of Section 337. Specifically, the Commission has determined to affirm, with modifications, the ALJ's finding that claim 7 of the '917 patent and claim 24 of the '742 patent are invalid for lack of enablement and for lack of written description, and that complainant has not shown that the domestic industry requirement is met with respect to the '917 and '742 patents. The Commission has determined that complainant has not shown that the accused products directly infringe claim 7 of the '917 patent because they do not meet the limitation ''command,'' and that complainant has not shown that the accused products directly infringe claim 24 of the '742 patent because they do not meet the limitation ''activate or control.'' The Commission has also determined that complainant has not shown that the independently sold Wii MotionPlus and Nunchuck accessories contributorily infringe claim 24 of the '742 patent. Lastly, the Commission has determined that respondent has not shown that claim 24 of the '742 patent is obvious.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.
Issued: September 12, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–22643 Filed 9–17–13; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Stonybrook Land, LLC,* Civil Action No. 1:13–CV–1119 (TJM/RFT), was lodged with the United States District Court for the Northern District of New York on September 10, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant Stonybrook Land, LLC, pursuant to Clean Water Act Section 404(s), 33 U.S.C. 1344(s), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Assistant United States Attorney Adam J. Katz, James T. Foley Courthouse, 445 Broadway, Room 218, Albany, NY 12207, and refer to *United States* v. *Stonybrook Land, LLC,* USAO # 2010V00052.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Northern District of New York, James T. Foley Courthouse, 445 Broadway, Suite 509, Albany, NY 12207. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

**Cherie L. Rogers,**

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2013–22635 Filed 9–17–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–NEW]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Request for ATF Background Investigation Information

**ACTION:** 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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 November 18, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or

associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Renee Reid, Chief Personnel Security Branch at *Renee.Reid@atf.gov.*

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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Summary of Information Collection**

(1) *Type of Information Collection:* New collection of information.

(2) *Title of the Form/Collection:* Request for ATF Background Investigation Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 8620.65; Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government.

**Need for Collection**

This form is necessary to maintain a record of another agency's official request for an individual's background investigation record. The documented request will assist ATF in ensuring that unauthorized disclosures of information do not occur.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 300 respondents will complete a 5 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: September 12, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–22618 Filed 9–17–13; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Division of Longshore and Harbor Workers' Compensation Proposed Revision of Existing Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act (LS–200, LS–201, LS–203, LS–204, LS–262, LS–267, LS–271, LS–274, and LS–513). A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before November 18, 2013.

**ADDRESSES:** Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0701, fax (202) 693–1447, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). LHWCA provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several Acts extend the Longshore Act's benefits and procedures to certain other employees. The information collections in this package are necessary for proper administration of the provisions of the LHWCA and its extensions. This information collection is currently approved for use through August 31, 2015. However, one of the forms in this package, the LS–513 (Report of Payments), is now being modified slightly to include the collection of additional data which has caused a change in burden. The LS–513 is used by insurance carriers and self-insured employers to annually report the total amount of payments made under the LHWCA and its extensions. The modifications to the LS–513 will affect only those few carriers and self-insured employers making payments under the Defense Base Act (DBA), one of the LHWCA's extensions. These entities will now be required to report their DBA payments by contracting agency (*i.e.,* the government agency with which the injured worker's employer contracted) on the form. OWCP needs this information to better cross-reference the information submitted on the LS–202 (Employer's First Report of Injury or Occupational Illness) and to adequately monitor DBA claims processing and compliance. OWCP estimates that the LS–513 modification will increase total burden for the form by only 5 hours. While respondents who do not currently capture the contracting-agency data in a way that can be easily retrieved and reported may incur additional costs to adapt their information technology systems to this reporting requirement, these costs will be limited to the first year. OWCP estimates the additional first-year cost to be $769.40 per respondent.

Both the LS–513 and another form in this package, the LS–274 (Report of Injury Experience), have an increase in burden due to the program not being able to collect the information via proposed weblink as originally forecasted. The additional increases are 122.5 hours for the LS–513 and 518 hours for the LS–274. The package is being re-submitted for this reason as well.

*II. Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*III. Current Actions:* The Department of Labor seeks the approval for the revision of this currently approved information collection.

*Agency:* Office of Workers' Compensation Programs.

*Type of Review:* Revision.

*Title:* Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

*OMB Number:* 1240–0014.

*Agency Number:* (LS–200, LS–201, LS–203, LS–204, LS–262, LS–267, LS–271, LS–274, and LS–513).

*Affected Public:* Individuals or households, Businesses or other for-profit.

*Total Respondents:* 130,036.

*Total Annual Responses:* 130,036.

*Estimated Total Burden Hours:* 44,955.

*Estimated Time per Response:* 2 minutes to 3 hours.

*Frequency:* On occasion and annually.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $46,866.

| Burden summary | Hours |
|---|---|
| LS–200 (20 CFR 702.285, Report of Earnings) | 1,904 |
| 20 CFR 702.162 (Liens) | 5 |
| 20 CFR 702.174 (Certifications) | 4 |
| 20 CFR 702.175 (Reinstatements) | 1 |
| 20 CFR 702.242 (Settlement Applications) | 9,498 |
| 20 CFR 702.321 (Section 8(f) Payments) | 1,425 |
| ESA–100 (20 CFR 702.111, 702.201) | 840 |
| LS–271 (Self Insurance Application) | 60 |
| LS–274 (Report of Injury Experience of Insurance Carrier or Self-Insured Employer) | 565 |
| LS–201 (Injury or Death Notice) | 910 |
| LS–513 (Payment Report) | 288 |
| LS–267 (Claimant's Statement) | 37 |
| LS–203 (Employee Comp. Claim) | 2,048 |
| LS–204 (Medical Report) | 27,300 |
| LS–262 (Claim for Death Benefits) | 70 |
| Total Burden Hours | 44,955 |

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: September 12, 2013.

**Yoon Ferguson,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.*

[FR Doc. 2013–22705 Filed 9–17–13; 8:45 am]

**BILLING CODE 4510–CF–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby provides updated information regarding meetings for the transaction of National Science Board business that was previously given in Notice 2013–22590, scheduled for publication on September 16, 2013 (78 FR 56944).

**PREVIOUS DATE AND TIME:** September 19, 2013 from 8:00 a.m. to 11:00 a.m. and 4:00 p.m. to 4:15 p.m.

**REVISED TIME:** Morning session—no change. Afternoon session is now from 4:00 p.m. to 5:00 p.m.

**PLACE:** No change.

**STATUS:** No change.

**ADDITIONAL INFORMATION:** The morning session will be webcast. To view the session, log onto: *http://uofw.adobeconnect.com/nsfboardmeeting/* and follow the directions. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for additional information and schedule updates, or contact Jennie Moehlmann, *jmoehlma@nsf.gov,* or (703) 292–7000. The Public Affairs contact is Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

**Revised Meeting Agenda**

*Plenary Executive Closed Session: 4:00–5:00 p.m.*

- Chairman's remarks
- Nominations Committee recommendations
- Discussion of legislative matters

**MEETING ADJOURNS:** 5:00 p.m.

**Ann Bushmiller,**

*Senior Counsel to the National Science Board.*

[FR Doc. 2013–22803 Filed 9–16–13; 4:15 pm]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0215]**

## Compliance With Order EA–13–109, Order Modifying Licenses With Regard to Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft Japan Lessons-Learned Project Directorate guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing this draft Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2013–02, ''Compliance with Order EA–13–109, Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation under Severe Accident Conditions.'' (ADAMS Accession No. ML13247A417) This draft JLD–ISG provides guidance and clarification to assist nuclear power reactors applicants and licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions.

**DATES:** Comments must be filed no later than October 18, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

**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–2013–0215. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Rajender Auluck, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1025; email: *Rajender.Auluck@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0215 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–2013–0215.

• *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. The draft JLD–ISG–2013–02 is available in ADAMS under Accession No. ML13247A417.

• *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.

• *NRC's Interim Staff Guidance Web site:* JLD–ISG documents are also available online under the ''Japan Lessons Learned'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

*B. Submitting Comments*

Please include Docket ID NRC–2013–0215 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 Information

The NRC staff developed this draft JLD–ISG–2013–02 to provide guidance and clarification to assist nuclear power reactor applicants and licensees with the identification of methods needed to comply with requirements to mitigate challenges to key safety functions. These requirements are contained in Order EA–13–109, ''Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation under Severe Accident Conditions'' (ADAMS Accession No. ML13130A067). The draft ISG is not a substitute for the requirements in Order EA–13–109, and compliance with the ISG is not a requirement. This ISG is being issued in draft form for public comment to involve the public in development of the implementing guidance.

The events at the Fukushima Dai-ichi nuclear power plant following the March 2011, earthquake and tsunami highlight the possibility that events such as rare natural phenomena could challenge the traditional defense-in-depth protections related to preventing accidents, mitigating accidents to prevent the release of radioactive materials, and taking actions to protect the public should a release occur. At Fukushima Dai-ichi, limitations in time and unpredictable conditions associated with the accident significantly hindered attempts by the operators to prevent core damage and containment failure. In particular, the operators were unable to successfully operate the containment venting system. These problems, along with venting the containments under challenging conditions following the tsunami, contributed to the progression of the accident from inadequate cooling of the core leading to core damage, to compromising containment functions from overpressure and over-temperature conditions, and to the hydrogen explosions that destroyed the reactor

buildings (secondary containments) of three of the Fukushima Dai-ichi units. The loss of the various barriers led to the release of radioactive materials, which further hampered operator efforts to arrest the accidents and ultimately led to the contamination of large areas surrounding the plant. Fortunately, the evacuation of local populations minimized the immediate danger to public health and safety from the loss of control of the large amount of radioactive materials within the reactor cores.

The events at Fukushima reinforced the importance of reliable operation of hardened containment vents during emergency conditions, particularly, for small containments such as the Mark I and Mark II designs. On March 12, 2012, the NRC issued Order EA–12–050 [1] requiring the Licensees identified in Attachment 1 to this order to implement requirements for a reliable hardened containment venting system (HCVS) for Mark I and Mark II containments. Order EA–12–050 required licensees of BWR facilities with Mark I and Mark II containments to install a reliable HCVS to support strategies for controlling containment pressure and preventing core damage following an event that causes a loss of heat removal systems (e.g., an extended loss of electrical power). The NRC determined that the issuance of EA–12–050 and implementation of the requirements of that order were necessary to provide reasonable assurance of adequate protection of the public health and safety.

While developing the requirements for a reliable HCVS in Order EA–12–050, the NRC acknowledged that questions remained about maintaining containment integrity and limiting the release of radioactive materials if the venting systems were used during severe accident conditions. The NRC staff presented options to address these issues, including the possible use of engineered filters to control releases, for Commission consideration in SECY–12–0157, ''Consideration of Additional Requirements for Containment Venting Systems for Boiling Water Reactors With Mark I and Mark II Containments'' (issued November 26, 2012). Option 2 in SECY–12–0157 was to modify EA–12–050 to require severe accident capable vents (i.e., a reliable HCVS capable of operating under severe accident conditions). Other options discussed in SECY–12–0157 included the installation of engineered filtered containment venting systems (Option 3) and the development of a severe accident confinement strategy (Option 4). In the Staff Requirements Memorandum (SRM) for SECY–12–0157, dated March 19, 2013, the Commission approved Option 2 and directed the staff to issue a modification to Order EA–12–050 requiring licensees subject to that order to ''upgrade or replace the reliable hardened vents required by Order EA–12–050 with a containment venting system designed and installed to remain functional during severe accident conditions.''

The requirements in this order, in addition to providing a reliable HCVS to assist in preventing core damage when heat removal capability is lost (the purpose of EA–12–050), will ensure that venting functions are also available during severe accident conditions. Severe accident conditions include the elevated temperatures, pressures, radiation levels, and combustible gas concentrations, such as hydrogen and carbon monoxide, associated with accidents involving extensive core damage, including accidents involving a breach of the reactor vessel by molten core debris. This order requires installation of reliable hardened vents that will not only assist in preventing core damage when heat removal capability is lost, but will also function in severe accident conditions (i.e., when core damage has occurred). The safety improvements to Mark I and Mark II containment venting systems required by this order are intended to increase confidence in maintaining the containment function following core damage events. Although venting the containment during severe accident conditions could result in the release of radioactive materials, venting could also prevent containment structural and gross penetration leakage failures due to overpressurization that would hamper accident management (e.g., continuing efforts to cool core debris) and ultimately result in larger, uncontrolled releases of radioactive material.

On August 28, 2013, NEI submitted NEI 13–02, ''Industry Guidance for Compliance with Order EA–13–109,'' Revision C2 (ADAMS Accession No. ML13247A403), to provide specification for the development, implementation, and maintenance of guidance in response to the order regarding reliable hardened containment vents capable of operation under severe accident conditions. This ISG endorses, with clarifications and exceptions, the methodologies described in the industry guidance document NEI 13–02.

[1] ''Order Modifying Licenses With Regard To Reliable Hardened Containment Vents (Effective Immediately),'' EA–12–050 (March 12, 2012) (ADAMS Accession No. ML12056A043).

**Proposed Action**

By this action, the NRC is requesting public comments on draft JLD–ISG–2013–02. This draft JLD–ISG proposes guidance related to requirements contained in Order EA–13–109, ''Order Modifying Licenses With Regard to Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions''. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 11th day of September 2013.

For the Nuclear Regulatory Commission.

**David L. Skeen,**

*Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–22688 Filed 9–17–13; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. R2013–9; Order No. 1833]**

### International Mail Contract

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning a bilateral rate and service agreement with Korea Post. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* September 20, 2013.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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**I. Introduction**

*Background.* On September 10, 2013, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.,* announcing

that it has entered into a bilateral agreement with Korea Post (Agreement), along with a Type 2 rate adjustment.[1] It asks that the Commission include the Agreement within the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010–35) product on grounds of functional equivalence. This Order provides public notice of the Postal Service's Notice, invites comments, and takes other administrative actions.

## II. The Postal Service's Filings

*Compliance with filing requirements.* In addition to the Notice, the Postal Service filed an application for non-public treatment of materials filed under seal (Attachment 1); a redacted copy of the Korea Post Agreement (Attachment 2); and a redacted Excel file with supporting financial documentation. Notice at 3. The Postal Service also filed unredacted copies of the Agreement and the supporting financial documentation under seal. *Id.*

The Agreement is the most recent in a series of agreements the Postal Service has proposed for inclusion within Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators I (MC2010–35).[2] The Postal Service identifies Korea Post, the postal operator for the Republic of Korea, and the Postal Service as the parties to the Agreement. *Id.* at 4.

The Postal Service describes the Agreement as establishing a service for delivery confirmation scanning with Letter Post small packets. *Id.* It asserts this service is similar to the service for delivery confirmation scanning with Letter Post small packets established by the China Post 2010 Agreement and other agreements approved for inclusion with the product. *Id.* It states that the Type 2 rate adjustment results in an improvement over default rates established under the Universal Postal Union Acts for inbound letter post items. *Id.* at 1.

The Postal Service identifies October 1, 2013 as the intended effective date; states that its Notice provides the requisite advance notice; identifies a Postal Service official as a contact person; provides financial data and information in the redacted workpapers; describes expected operational improvements; and addresses why the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 4–7.

*Data collection and performance reporting proposals.* The Postal Service proposes that no special data collection plan be created for the Agreement because it intends to report information on the Agreement through the Annual Compliance Report. *Id.* at 7. With respect to performance measurement, the Postal Service asks that it be excepted from separate reporting under 39 CFR 3055.3(a)(3), and cites the Commission's granting of similar exceptions for other agreements in support of its proposal. *Id.* at 7–8. The Postal Service further requests, pursuant to 39 CFR 3055.3(a)(3), that the Commission approve an exception to the performance reporting requirements for all agreements added to the Mail Classification Schedule as Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 because the performance of the products covered by those agreements is already included in the measurement of other products. *Id.* at 12.

*Statutory criteria.* The Postal Service states that under 39 U.S.C. 3622(c)(10), the criteria for Commission review are whether the Agreement (1) improves the Postal Service's net financial position or enhances performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* at 8. It states that it addresses the first two criteria in its Notice and views the third criterion as inapplicable, given Korea Post's status as the designated operator for Letter Post originating in the Republic of Korea. *Id.*

*Functional equivalence.* In support of a finding of functional equivalence, the Postal Service states that the terms of the Agreement fit within the proposed Mail Classification Schedule (MCS) language for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1, so the Agreement and the agreements previously included within this product conform to a common description. *Id.* at 9. The Postal Service also states that the Agreement and referenced agreements constructed from a similar template and contain many similar terms and conditions, including establishing a service for delivery confirmation scanning with Letter Post small packets; are with foreign postal operators; and have cost characteristics, as they relate to services for delivery confirmation scanning with Letter Post small packets, that are similar. *Id.* at 9–10.

The Postal Service identifies two material differences between the Agreement and the Singapore Post Agreement. Article 8, Paragraph 1 provides that the Agreement may be terminated for good cause if a party fails to make timely and full payment of any undisputed invoice of portion thereof. *Id.* at 11. Annex 2 to the Agreement contains a section related to interest on past due undisputed invoices and portions thereof for inbound mailstreams. *Id.* The Postal Service states that these differences do not detract from the conclusion that the Korea Post Agreement is functionally equivalent to the Singapore Post 2011 Agreement and other agreements in the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

## III. Supplemental Information

The Notice states: ''The agreement's inbound market dominant rates are planned to become effective on October 1, 2013. Public notice of these rates is being given through this Notice at least 45 days before the effective date.'' *Id.* at 3.[3] Given the filing date of the Notice, please reconcile these two statements. A response to this inquiry is due no later than September 16, 2013.

## IV. Commission Action

The Commission, in conformance with rule 3010.44, establishes Docket No. R2013–9 to consider matters raised by the Notice. The Commission invites interested persons to submit comments on whether the Notice is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than September 20, 2013.

The public portions of the Postal Service's filings have been posted on the Commission's Web site. They can be accessed at *http://www.prc.gov.* Information on how to obtain access to non-public material is available at 39 CFR part 3007.

The Commission appoints James F. Callow to serve as Public Representative in this proceeding.

## V. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. R2013–9 to consider matters raised by the Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Bilateral Agreement with Korea Post, filed September 10, 2013.

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Bilateral Agreement with Korea Post, September 10, 2013 (collectively, Notice).

[2] *See* Notice at 1–2 for previous agreements. The Postal Service uses the Singapore Post Agreement for purposes of identifying differences in the Agreement.

[3] *See also* 39 CFR 3010.44(b) (''[N]o rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.'').

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due no later than September 20, 2013.

4. The response to the supplemental information requested is due no later than September 16, 2013.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2013–22608 Filed 9–17–13; 8:45 am]

**BILLING CODE 7710–FW–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Application and Claim for Sickness Insurance Benefits; OMB 3220–0039.

Under Section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage, or childbirth. Under Section 1(k) of the RUIA a statement of sickness, with respect to days of sickness of an employee, is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The Railroad Retirement Board's (RRB) authority for requesting supplemental medical information is Section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR part 335.

The forms currently used by the RRB to obtain information needed to determine eligibility for, and the amount of, sickness benefits due a claimant follow: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7H, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; Form ID–11A, Requesting Reason for Late Filing of Sickness Benefit, and ID–11B, Notice of Insufficient Medical and Late Filing. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes no changes to any of the forms in the information collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| SI–1a | 17,000 | 10 | 2,833 |
| SI–1b (Doctor) | 17,000 | 8 | 2,267 |
| SI–3 (manual) | 118,150 | 5 | 9,846 |
| SI–3 (Internet) | 20,850 | 5 | 1,738 |
| SI–7 | 22,600 | 8 | 3,013 |
| SI–8 | 50 | 5 | 4 |
| ID–7H | 50 | 5 | 4 |
| ID–11A | 800 | 4 | 53 |
| ID–11B | 1,000 | 4 | 67 |
| Total | 197,500 | ..... | 19,825 |

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Chief of Information Resources Management.*

[FR Doc. 2013–22660 Filed 9–17–13; 8:45 am]

**BILLING CODE 7905–01–P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 26, 2013, 10:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

*Portion open to the public:*

(1) Executive Committee Reports

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: September 13, 2013.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2013–22792 Filed 9–16–13; 11:15 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, September 18, 2013 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

- The Commission will consider whether to adopt new rules and forms under the Securities Exchange Act of 1934 relating to the registration of municipal advisors.
- The Commission will consider whether to propose rules to require companies to disclose the median annual total compensation of all employees and the ratio of that median to the annual total compensation of the company's chief executive officer as mandated by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The duty officer has determined that no earlier notice was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 13, 2013.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2013–22787 Filed 9–16–13; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, September 17, 2013 at 4:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

Post argument discussion

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: September 16, 2013.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2013–22822 Filed 9–16–13; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70386; File No. SR–BYX–2013–030]**

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

September 12, 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 August 30, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the proposed changes will become operative on September 3, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its fee schedule effective September 3, 2013, in order to amend the fee structure related to its Retail Price Improvement (''RPI'') program with respect to executions in securities priced below $1.00.

Currently, pursuant to the RPI program the Exchange provides a $0.0025 rebate per share for any Retail Order[6] that removes liquidity from the BYX order book (except for a Retail Order that removes displayed liquidity, which is subject to standard rebates and fees). The Exchange currently charges a $0.0025 fee per share for any Retail

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BYX Rule 11.24(a)(2), a ''Retail Order'' is an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

Price Improving Order [7] that adds liquidity to the Exchange order book and is removed by a Retail Order. Finally, the Exchange currently charges at $0.0010 fee per share for any non-displayed order that adds liquidity to the Exchange order book and is removed by a Retail Order.

The fees and rebates described above are applied without regard to the price of the security for which an order is executed (i.e., RPI rebates apply in all cases to Retail Orders other than those that remove displayed liquidity and RPI fees apply to all Retail Price Improving Orders that add liquidity and are removed by Retail Orders). In contrast, with respect to executions of orders on the Exchange outside of the RPI program, the Exchange charges different rates and has a different rebate structure depending on whether an execution is in a security priced below $1.00 or a security priced $1.00 and above. Consistent with this structure, the Exchange proposes to limit the rebates and fees of the RPI program to executions in securities priced $1.00 or above and to apply its standard fee structure to all executions in securities priced below $1.00, even in executions related to the RPI program. Accordingly, in any security priced below $1.00, the Exchange proposes to charge 0.10% charge of the total dollar value of the execution to remove liquidity from the Exchange's order book, including all instances where a Retail Order removes liquidity from the Exchange in connection with the RPI program. Also, in all instances for any execution of a security priced below $1.00 the Exchange proposes to provide such execution free of charge, but also without any liquidity rebate, to the party that added liquidity to the Exchange's order book. Accordingly, this no-rebate and no-fee model to add liquidity will apply to all executions of securities priced below $1.00 on the Exchange, including those related to the RPI program. The Exchange does not propose to change any pricing related to securities priced $1.00 or above in connection with this proposal.

The Exchange believes the current structure, providing significant rebates to incoming Retail Orders and charging liquidity providers interacting with such orders, in securities priced below $1.00 may act to discourage liquidity providers from adding meaningful liquidity in such securities. Accordingly, the proposal is intended to encourage liquidity in securities priced below $1.00 while otherwise maintaining the benefits of the RPI program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that its proposal to modify the fee schedule related to the RPI program is reasonable because it applies a fee model to the RPI program with respect to securities priced below $1.00 that is consistent with all other executions on the Exchange. As noted above, the Exchange believes the current structure, providing rebates to incoming Retail Orders and charging liquidity providers interacting with such orders, in securities priced below $1.00 may act to discourage liquidity providers from adding meaningful liquidity in such securities. Accordingly, the Exchange believes the proposal is reasonable because it is intended to encourage liquidity in securities priced below $1.00 while otherwise maintaining the benefits of the RPI program.

The Exchange also believes that this proposal is equitably allocated and not unfairly discriminatory because it will be applied equally to all participants. While the Exchange acknowledges that certain executions for Retail Orders will be charged fees under the proposal, where such orders currently receive a rebate, the Exchange believes that such costs are offset by the benefits of continued liquidity in securities priced below $1.00. Additionally, such costs are offset by the fact that all other executions of Retail Orders under the current RPI program will continue to receive the current rebates provided by the Exchange. The Exchange again notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to apply its standard Exchange pricing to all orders that are executed as part of the RPI program in securities priced below $1.00.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Because the market for order execution is extremely competitive, Members may choose to preference other market centers ahead of the Exchange if they believe that they can receive better fees or rebates elsewhere. 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. The Exchange believes that its pricing for the RPI program is appropriately competitive vis-à-vis the Exchange's competitors. Further, the Exchange believes that providing a consistent pricing structure for all securities priced below $1.00 will encourage liquidity provision in such securities, which fosters intra-market competition to the benefit of all market participants that enter orders on the Exchange, including Members that submit Retail Orders.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 thereunder.[11] 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

[7] As defined in BYX Rule 11.24(a)(3), a ''Retail Price Improvement Order'' consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f).

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–BYX–2013–030 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–BYX–2013–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–030 and should be submitted on or before October 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22653 Filed 9–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70385; File No. SR–BYX–2013–031]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

September 12, 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 August 30, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 3, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective September 3, 2013, in order to modify pricing related to executions that occur on NASDAQ OMX BX, Inc. (''NASDAQ BX'') through the Exchange's TRIM routing strategy.[6] NASDAQ BX implemented certain pricing changes effective September 3, 2013, including modification from a highest potential rebate[7] of $0.0014 per share when removing liquidity to a highest potential rebate of $0.0013 per share when removing liquidity. To maintain a direct pass through of the applicable economics for TRIM executions at NASDAQ BX (assuming the Exchange is able to achieve the highest potential rebate), the Exchange proposes to rebate $0.0013 per share for an order routed through its TRIM routing strategy and executed on NASDAQ BX, rather than the rebate of $0.0014 per share that it currently offers for such orders. The Exchange is not proposing any other changes to its routing fees at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BYX Rule 11.13(a)(3)(G).

[7] NASDAQ BX maintains a tiered pricing structure that results in variable rebates and fees depending on the amount of liquidity added or removed.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to the Exchange's routing fee for TRIM executions at NASDAQ BX are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror the rebate applicable to the execution if such routed orders were executed directly by the Member at NASDAQ BX.

*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. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at NASDAQ BX through the TRIM routing strategy, the proposed fee change is designed to equal the rebate that a Member would have received if such routed orders would have been executed directly by a Member at NASDAQ BX.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 thereunder.[11] 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–BYX–2013–031 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–BYX–2013–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–031 and should be submitted on or before October 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22652 Filed 9–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70384; File No. SR–EDGX–2013–34]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the EDGX Exchange, Inc. Fee Schedule

September 12, 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 September 3, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) decrease the rebate for orders yielding Flag A; and (ii) increase the rebate for orders yielding Flag C. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''Member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

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 amend its Fee Schedule to: (i) decrease the rebate for orders yielding Flag A; and (ii) increase the rebate for orders yielding Flag C.

Flag A

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0020 per share for Members' orders that yield Flag A, which routes to the NASDAQ Stock Market LLC (''Nasdaq'') and adds liquidity. The Exchange proposes to amend its Fee Schedule to decrease this rebate to $0.0015 per share for Members' orders that yield Flag A. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is rebated for routing orders in Tape C securities to Nasdaq when it does not qualify for a volume tiered rebate. When DE Route routes to Nasdaq, it is rebated a standard rate of $0.0015 per share for Tape C securities.[4] DE Route will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange notes that the proposed change is in response to Nasdaq's September 2013 fee change where Nasdaq decreased the rebate it provides its customers, such as DE Route, from a rebate of $0.0020 per share to a rebate of $0.0015 per share for orders in Tape C securities that are routed to Nasdaq.[5]

Flag C

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0004 per share for Members' orders that yield Flag C, which routes to Nasdaq OMX BX, Inc. (''BX''). The Exchange proposes to amend its Fee Schedule to increase this rebate to $0.0011 per share for Members' orders that yield Flag C. The proposed change represents a pass through of the rate that DE Route is rebated when it achieves a volume tiered rebate on BX by routing orders to BX. When DE Route routes to BX, it is rebated a volume tiered rate of $0.0011 per share.[6] DE Route will pass through this rate on BX to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange notes that the proposed change is in response to BX's September 2013 fee change where BX increased its rebate to $0.0011 per share for orders that are routed to BX.[7]

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on September 3, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag A

The Exchange believes that its proposal to decrease the pass through rebate for Members' orders that yield Flag A from $0.0020 to $0.0015 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to Nasdaq through DE Route. Prior to Nasdaq's September 2013 fee change, Nasdaq provided DE Route a rebate of $0.0020 per share for orders in all tapes yielding Flag A, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In September 2013, Nasdaq decreased the standard rebate it provides its customers, such as DE Route, from a rebate of $0.0020 per share to a rebate of $0.0015 per share for orders that are routed to Nasdaq in Tape C securities.[10] Therefore, the Exchange believes that the proposed change in Flag A from a rebate of $0.0020 per share to a rebate of $0.0015 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Flag C

The Exchange believes that its proposal to increase the pass through rebate for Members' orders that yield Flag C from $0.0004 to $0.0011 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BX through DE Route. In September 2013, BX increased the rebate it provides its customers, such as DE Route, from a rebate of $0.0010 per share to a rebate of $0.0011 per share for orders that are routed to BX and qualify for a volume tiered rebate.[11] Therefore, the Exchange believes that the proposed change in Flag C from a rebate of $0.0004 per share to a rebate of $0.0011 per share is equitable and reasonable because it accounts for the pricing changes on BX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to BX. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant

[4] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered discount on Nasdaq, its rate for Flag A will not change. The Exchange further notes that, due to billing system limitations that do not allow for separate rates by tape, it will pass through the lesser rebate of $0.0015 per share for all Tapes A, B & C securities.

[5] *See* Nasdaq, Price List—Trading Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#rebates* (offering a standard, non-tiered rebate of $0.0015 per share for Tape C Securities). *See also* File No. SR–NASDAQ–2013–114.

[6] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered increased rebate on BX, its rate for Flag C will not change.

[7] *See* BX, BX Pricing List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing* (offering a rebate to remove liquidity of $0.0011 per share for MPIDs that add an average of 25,000 but less than 1 million shares per day). *See also* File No. SR–BX–2013–051.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Nasdaq, Price List—Trading Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#rebates* (offering a standard, non-tiered rebate of $0.0015 per share for Tape C Securities). *See also* File No. SR–NASDAQ–2013–114.

[11] *See* BX, BX Pricing List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing* (offering a rebate to remove liquidity of $0.0011 per share for MPIDs that add an average of 25,000 but less than 1 million shares per day). *See also* File No. SR–BX–2013–051.

departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag A

The Exchange believes that its proposal to pass through a rebate of $0.0015 per share for Members' orders that yield Flag A would increase intermarket competition because it offers customers an alternative means to route to Nasdaq for the same price as entering orders in Tape C securities on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

Flag C

The Exchange believes that its proposal to pass through a rebate of $0.0011 per share for Members' orders that yield Flag C would increase intermarket competition because it offers customers an alternative means to route to BX for the same price as entering orders on BX directly, provided those orders would have qualified for a volume based increased rebate. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2013–34 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2013–34 and should be submitted on or before October 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22651 Filed 9–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4 (f)(2).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70382; File No. SR–CBOE–2013–086]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

September 12, 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 August 30, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fees Schedule of its CBOE Stock Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

CBSX proposes to amend its Fees Schedule. First, the Exchange proposes to amend Footnote 6 of the CBSX Fees Schedule to remove AMD and MU from its list of Select Symbols for whom transactions priced $1 or greater (all fees addressed in this filing relate to transactions priced $1 or greater) are assessed a fee of $0.0050 per share (for Maker executions) and provided a rebate of $0.0045 per share (for Taker executions). This means that AMD and MU will now fall into the ''all other securities'' category and fees and rebates applicable to ''all other securities'' will apply to AMD and MU, which are as follows (and are not being changed in this proposed rule change):

| Execution type | Rate |
|---|---|
| Maker (adds less than 0.08% of TCV of liquidity in one day) (1)(5) | $0.0018 per share. |
| Maker (adds at least 0.08% but less than 0.16% of TCV of liquidity in one day) (1)(5) | 0.0017 per share. |
| Maker (adds at least 0.16% but less than 0.24% of TCV of liquidity in one day) (1)(5) | 0.0016 per share. |
| Maker (adds at least 0.24% but less than 0.42% of TCV of liquidity in one day) (1)(5) | 0.0015 per share. |
| Maker (adds 0.42% or more of TCV of liquidity in one day) (1)(5) | 0.0014 per share. |
| Taker (removes 9,999,999 shares or less of liquidity in one day (1) or less than 85% Execution Rate) | 0.0015 rebate per share. |
| Taker (removes 10,000,000 shares or more of liquidity in one day (1) and equal to or greater than 85% Execution Rate). | 0.0017 rebate per share. |
| Maker (adds liquidity using a silent order) | 0.0018 per share. |
| Taker (removes silent order liquidity) | 0.0015 rebate per share. |
| Maker (adds liquidity using a silent-mid or silent-post-mid order) | 0.0018 per share. |
| Taker (removes silent-mid or silent-post-mid liquidity) | 0.0015 rebate per share. |

AMD and MU had been included in the Select Symbols in an attempt to attract greater liquidity in both symbols, but such increased liquidity has not been achieved. CBSX hopes that moving AMD and MU into the ''all other securities'' category will increase liquidity provision in both products.

CBSX also proposes to add AAPL and GOOG to the list of Select Symbols. This proposed change is an aspirational attempt to increase liquidity provision in these products. AAPL and GOOG are higher-priced stocks that typically have larger spreads than other products, and CBSX believes that the Select Symbols fee structure will attract more liquidity in stocks fitting this profile.

CBSX also proposes to amend Footnote 5 of the CBSX Fees Schedule to state that volume from Maker executions in the Select Symbols (priced $1 or greater) will count towards a market participant's % of TCV. Currently, Maker fees for transactions in all other securities are determined based on the percentage of TCV [3] of liquidity that the Maker adds to CBSX. Because these fees only apply to transactions in all other securities, only volume in all other securities (and not volume in the Select Symbols) counted towards a Maker's percentage (however, TCV includes volume in the Select Symbols, per the definition of TCV). Therefore, CBSX hereby proposes to include volume from Maker executions in the Select Symbols to count towards a market participant's percentage of TCV. Since volume from the Select Symbols is already included in TCV (the denominator of the calculation), this proposed change can only be a benefit to market participants, as any volume they do in the Select Symbols (the numerator) will push their percentages higher, therefore making them more likely to qualify for the lower-fee tiers.

The proposed changes are to take effect on September 3, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to move AMD and MU to be assessed the fees of ''all other securities'' because transactions in these products will merely be assessed the fee and rebate amounts of all securities other than the Select Symbols. Further, this move is designed to attract more trading in these products, as more volume was traded when they were assessed the ''all other securities'' fees than when they were assessed the Select Symbols fees. CBSX believes that the liquidity profile and characteristics of AMD and MU will allow for more liquidity when traded under the fees of ''all other securities''. Finally, these fees for AMD and MU will be assessed equally to all market participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to designate AAPL and GOOG as Select Symbols because transactions in these stocks will be assessed the same fees as the other Select Symbols. Further, the amount of the proposed Maker fee for the Select Symbols is merely $0.0005 greater than the amount of the proposed Taker rebate. CBSX believes that the Select Symbols fee structure will attract more liquidity in stocks fitting this profile. Finally, these Select Symbols fees will be assessed equally to all market participants.

The Exchange believes that it is reasonable to state that volume from Maker executions in the Select Symbols (priced $1 or greater) will count towards a market participant's % of TCV because this proposed change can only be a benefit to market participants, as any volume they do in the Select Symbols (the numerator) will push their percentages higher, therefore making them more likely to qualify for the lower-fee tiers. The Exchange believes that this change is equitable and not unfairly discriminatory because it will

[3] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

be applied to all market participants equally.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBSX does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will be applied to all market participants. CBSX does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on CBSX. Further, the proposed changes are designed to incentivize more trading on CBSX, which could encourage other exchanges to enact their own competitive changes. To the extent that the proposed changes make CBSX a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBSX market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–086 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–086. 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–CBOE–2013–086 and should be submitted on or before October 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70383; File No. SR–EDGA–2013–27]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the EDGA Exchange, Inc. Fee Schedule

September 12, 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 September 3, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) decrease the rebate for orders yielding Flag A; and (ii) increase the rebate for orders yielding Flag C. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''Member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

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 amend its Fee Schedule to: (i) decrease the rebate for orders yielding Flag A; and (ii) increase the rebate for orders yielding Flag C.

Flag A

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0020 per share for Members' orders that yield Flag A, which routes to the NASDAQ Stock Market LLC (''Nasdaq'') and adds liquidity. The Exchange proposes to amend its Fee Schedule to decrease this rebate to $0.0015 per share for Members' orders that yield Flag A. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is rebated for routing orders in Tape C securities to Nasdaq when it does not qualify for a volume tiered rebate. When DE Route routes to Nasdaq, it is rebated a standard rate of $0.0015 per share for Tape C securities.[4] DE Route will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange notes that the proposed change is in response to Nasdaq's September 2013 fee change where Nasdaq decreased the rebate it provides its customers, such as DE Route, from a rebate of $0.0020 per share to a rebate of $0.0015 per share for orders in Tape C securities that are routed to Nasdaq.[5]

Flag C

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0010 per share for Members' orders that yield Flag C, which routes to Nasdaq OMX BX, Inc. (''BX''). The Exchange proposes to amend its Fee Schedule to increase this rebate to $0.0011 per share for Members' orders that yield Flag C. The proposed change represents a pass through of the rate that DE Route is rebated when it achieves a volume tiered rebate on BX by routing orders to BX. When DE Route routes to BX, it is rebated a volume tiered rate of $0.0011 per share.[6] DE Route will pass through this rate on BX to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange notes that the proposed change is in response to BX's September 2013 fee change where BX increased the rebate it provides its customers, such as DE Route, from a rebate of $0.0010 per share to a rebate of $0.0011 per share for orders that are routed to BX.[7]

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on September 3, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag A

The Exchange believes that its proposal to decrease the pass through rebate for Members' orders that yield Flag A from $0.0020 to $0.0015 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to Nasdaq through DE Route. Prior to Nasdaq's September 2013 fee change, Nasdaq provided DE Route a rebate of $0.0020 per share for orders in all tapes yielding Flag A, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In September 2013, Nasdaq decreased the standard rebate it provides its customers, such as DE Route, from a rebate of $0.0020 per share to a rebate of $0.0015 per share for orders that are routed to Nasdaq in Tape C securities.[10] Therefore, the Exchange believes that the proposed change in Flag A from a rebate of $0.0020 per share to a rebate of $0.0015 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Flag C

The Exchange believes that its proposal to decrease the pass through rebate for Members' orders that yield Flag C from $0.0010 to $0.0011 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to BX through DE Route. Prior to BX's September 2013 fee change, BX provided DE Route a rebate of $0.0010 per share for orders yielding Flag C, which DE Route passed through to the Exchange and the Exchange passed through to its Members. In September 2013, BX increased the rebate it provides its customers, such as DE Route, from a rebate of $0.0010 per share to a rebate of $0.0011 per share for orders that are routed to BX and qualify for a volume tiered rebate.[11] Therefore, the Exchange believes that the proposed change in Flag C from a rebate of $0.0010 per share to a rebate of $0.0011 per share is equitable and reasonable because it accounts for the pricing changes on BX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to BX. The Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

[4] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered discount on Nasdaq, its rate for Flag A will not change. The Exchange further notes that, due to billing system limitations that do not allow for separate rates by tape, it will pass through the lesser rebate of $0.0015 per share for all Tapes A, B & C securities.

[5] *See* Nasdaq, Price List—Trading Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#rebates* (offering a standard, non-tiered rebate of $0.0015 per share for Tape C Securities). *See also* File No. SR–NASDAQ–2013–114.

[6] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered increased rebate on BX, its rate for Flag C will not change.

[7] *See* BX, BX Pricing List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing* (offering a rebate to remove liquidity of $0.0011 per share for MPIDs that add an average of 25,000 but less than 1 million shares per day). *See also* File No. SR–BX–2013–051.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Nasdaq, Price List—Trading Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#rebates* (offering a standard, non-tiered rebate of $0.0015 per share for Tape C Securities). *See also* File No. SR–NASDAQ–2013–114.

[11] *See* BX, BX Pricing List—Trading & Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing* (offering a rebate to remove liquidity of $0.0011 per share for MPIDs that add an average of 25,000 but less than 1 million shares per day). *See also* File No. SR–BX–2013–051.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag A

The Exchange believes that its proposal to pass through a rebate of $0.0015 per share for Members' orders that yield Flag A would increase intermarket competition because it offers customers an alternative means to route to Nasdaq for the same price as entering orders in Tape C securities on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

Flag C

The Exchange believes that its proposal to pass through a rebate of $0.0011 per share for Members' orders that yield Flag C would increase intermarket competition because it offers customers an alternative means to route to BX for the same price as entering orders on BX directly, provided those orders would have qualified for a volume based increased rebate. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2013–27 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2013–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2013–27 and should be submitted on or before October 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4 (f)(2).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70381; File No. SR–CHX–2013–16]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt Standards for the Cancellation or Adjustment of Bona Fide Error Trades, the Submission of Error Correction Transactions, and the Cancellation or Adjustment of Stock Leg Trades of Stock-Option or Stock-Future Orders

September 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on September 4, 2013 the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed this proposal pursuant to Section 19(b)(2) of the Act.[3] 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**

CHX proposes to amend Article 20, Rule 9 to outline and clarify the Exchange's current requirements for the cancellation of trades based on Bona Fide Error and to establish new requirements for the adjustment of trades based on Bona Fide Error; to adopt Article 20, Rule 9A to detail the Exchange's current requirements for Error Correction Transactions; and to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(2).

adopt Article 20, Rule 11 to amend the Exchange's current requirements for the cancellation of the stock leg trade of a Stock-Option order, to establish new requirements for the adjustment of the stock leg trade of a Stock-Option order, and to allow the stock leg trade of Stock-Future orders to be cancelled or adjusted pursuant to proposed Rule 11.

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Article 20, Rule 9 to outline and clarify the Exchange's current requirements for the cancellation of trades based on Bona Fide Error and to establish new requirements for the adjustment of trades based on Bona Fide Error; to adopt Article 20, Rule 9A to detail the Exchange's current requirements for Error Correction Transactions; and to adopt Article 20, Rule 11 to amend the Exchange's current requirements for the cancellation of the stock leg trade of a Stock-Option order, to establish new requirements for the adjustment of the stock leg trade of a Stock-Option order, and to allow the stock leg trade of Stock-Future orders to be cancelled or adjusted pursuant to proposed Rule 11.

**Proposed Article 20, Rule 9 ''Cancellation or Adjustment of Bona Fide Error Trades''**

Current Article 20, Rule 9 outlines two bases for the cancellation of trades at the request of all parties to the trade. Specifically, current Article 20, Rule 9(a) provides that transactions made in ''demonstrable error'' [4] and cancelled by both parties may be unwound, subject to the approval of the Exchange. Although the Exchange has provided specific guidance to its Participants in the form of CHX Information Memorandums with respect to demonstrable error, the CHX rules are silent as to the specific requirements or processes involved in the demonstrable error trade cancellation process.[5] In sum, the Exchange currently requires ''concrete, documented evidence that the initial trade was transacted in error or includes an erroneous term that requires the cancellation of the initial report.'' [6]

Moreover, current Article 20, Rule 9(b) outlines rules for the cancellation of the stock leg trade of a Stock-Option order. Specifically, current Article 20, Rule 9(b) provides that a trade representing the stock leg of a stock-option order may be cancelled at the request of all parties to the trade if, *inter alia,* market conditions in any of the non-Exchange markets prevent the options leg from executing at the price agreed upon by the parties or the options leg was cancelled by the exchange on which it was executed.

Although, both current Article 20, Rule 9(a) and Rule 9(b) require all the parties to the trade to consent to the cancellation of the trade, the reasons for each cancellation are substantively different. Given this difference, the Exchange proposes to separate current Article 20, Rule 9 into two different rules. The Exchange proposes to detail, *inter alia,* the requirements for the cancellation of trades based on demonstrable error under proposed Rule 9 and to detail, *inter alia,* the requirements for the cancellation of the stock leg of a stock-option order under proposed Rule 11.[7]

In sum, proposed Rule 9 (''Cancellation or Adjustment of Bona Fide Error Trades'') retains the substance of current Article 20, Rule 9(a), with some amendments. Under proposed Rule 9, the Exchange proposes (1) to explicitly outline and expand the current requirements for *cancellations* of trades based on Bona Fide Error [8] and (2) to allow for *adjustments* of trades based on Bona Fide Error, provided that certain additional requirements are met.[9]

Specifically, proposed Rule 9(a) states that a trade executed on the Exchange in ''Bona Fide Error,'' as defined under proposed Article 1, Rule 1(hh), may be cancelled or adjusted pursuant to this Rule, subject to the approval of the Exchange. The Exchange notes that proposed Rule 9 only applies to Bona Fide Error trades that were executed on the Exchange and, as such, orders that are routed to other market centers and executed at such away market centers are not within the purview of proposed Rule 9.[10] Moreover, the Exchange proposes to define ''Bona Fide Error'' exactly as defined in the Commission's release granting exemptive relief for Error Correction Transactions.[11] Thus, proposed Article 1, Rule 1(hh) defines ''Bona Fide Error'' as:

(1) the inaccurate conveyance or execution of any term of an order, including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; or the execution of an order on the wrong side of a market;

(2) the unauthorized or unintended purchase, sale, or allocation of

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[4] Although not currently in the CHX rules, the Exchange defines ''demonstrable error'' as a ''Bona Fide Error'' exactly as defined under the ''Order Exempting Certain Error Correction Transactions From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934.'' See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007). As discussed below, the Exchange proposes to adopt this definition as proposed Article 1, Rule 1(hh).

[5] Among other things, these CHX Information Memorandums have provided evidentiary standards and parameters for trade cancellations based on demonstrable errors.

For instance, CHX Information Memorandum (MR–11–8) states the following, in pertinent part (*italics* added):

*Cancellation of Transactions (CHX Article 20, Rule 9)*

''Additionally, the Department wishes to highlight the CHX rule requirement that trades can only be cancelled or busted based on mutual agreement of all parties involved if the initial trade was done in *demonstrable error.* The same factors used in making a [Bona Fide Error] determination apply with equal force to proposed cancellations under Article 20, Rule 9. Proper documentary proof will be required at the time of such requests in this case as well. *While we cannot say in advance what may be considered adequate proof of demonstrable error, the basic standard will be concrete, documented evidence that the initial trade was transacted in error or includes an erroneous term that requires the cancellation of the initial report.* Examples might include transcribed evidence of the correct trade terms versus what was entered in error (*i.e.,* a price of $15.42 vs $51.42) or recorded evidence of a misconveyance of terms (*i.e.,* print stock ABC vs BAC). Requests will be reviewed on a case-by-case basis prior to being transacted by CHX Operations staff.

Finally, we note that trades may only be cancelled pursuant to CHX Article 20, Rule 9. The Exchange does not have the authority to modify or adjust the individual terms of previously reported transactions.''

[6] *Id.*

[7] As discussed in great detail below, the Exchange proposes to clarify and expand the scope of current Article 20, Rules 9(a) and 9(b).

[8] *See supra* note 4.

[9] The Exchange notes that proposed Article 20, Rule 9 does not extinguish Participants' market access obligations pursuant to Rule 15c3–5 under the Act. *See* 17 CFR 240.15c3–5.

[10] Although the Exchange anticipates implementing it in the near future, the Exchange does not currently offer order routing.

[11] *See supra* note 4.

securities, or the failure to follow specific client instructions;

(3) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

(4) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

The Exchange notes that it currently permits trade cancellations based on Bona Fide Errors of the Participant submitting the order to the Matching System (''executing broker Participant'') or of the customer of the executing broker Participant, so long as the Bona Fide Error can be reasonably identified and supported by the executing broker Participant and verified by the Exchange. Thus, the Exchange proposes to clarify this limitation as proposed paragraph .01 of the Interpretations and Policies of proposed Rule 9. Specifically, proposed paragraph .01 provides that proposed Rule 9 shall only apply to Bona Fide Errors committed by the Participant that submitted the order to the Matching System or the customer of the Participant that submitted the order to the Matching System.

Proposed Rule 9(b) outlines the specific requirements that must be met by the executing broker Participant before the Exchange can consider a request to cancel or adjust an erroneous trade.[12] Specifically, proposed paragraph (b) states that the Exchange may approve a request for a trade cancellation or adjustment pursuant to this Rule and take the corrective action(s) necessary to effectuate such a cancellation or adjustment, provided that the items listed thereunder are submitted to the Exchange, in a form prescribed by the Exchange,[13] by the Participant that submitted the erroneous trade. Moreover, the proposed paragraph continues by stating that all of the requirements of the proposed paragraph must be complied with, to the satisfaction of the Exchange, before a trade cancellation or adjustment pursuant to this proposed Rule may be approved or any corrective action may be taken. In addition, the Exchange shall have sole discretion in determining whether the requirements of this Rule have been satisfied. Thereunder, the specific requirements are listed as proposed paragraphs (b)(1)–(3), which states as follows:

(1) *Timely written request.* The Participant that submitted the erroneous trade shall submit a written request for cancellation or adjustment, including all information and supporting documentation required by this Rule, including a Trade Error Report, no later than 4:30 p.m. CST on T+1. The Exchange will retain a copy of the written request, information and supporting documentation. In extraordinary circumstances, a cancellation or adjustment may be requested and effected after T+1, with the approval of an officer of the Exchange;

(2) *Bona Fide Error.* The Participant that submitted the erroneous trade shall identify the error that is a ''Bona Fide Error,'' as defined under Article 1, Rule 1(hh), and the source of the Bona Fide Error. The Participant shall also provide supporting documentation showing the objective facts and circumstances concerning the Bona Fide Error, such as the original terms of the order or a record of the misconveyance of terms; and

(3) *All parties consent.* The Exchange shall verify that the cancellation or adjustment is requested by all parties involved in the Bona Fide Error trade (or by an authorized agent of those parties). The Participant that submitted the erroneous trade shall provide supporting documentation evidencing this consent.

With respect to proposed paragraph (b)(1), although not currently stated in the CHX rules, the T+1 time requirement is the current time limit required by the Exchange for cancellation of trades based on demonstrable error. Based on its experience, the Exchange submits that the T+1 time requirement (*i.e.,* day of erroneous trade + one full trading day) is reasonable. The flexibility of the T+1 requirement is particularly necessary where the Bona Fide Error was not committed by the executing broker Participant, but by the customer of the executing broker Participant that relayed inaccurate order terms to the executing broker Participant. In such a case, the executing broker Participant would not have known, at the time the erroneous trade was executed, that the terms of the trade were erroneous. Thus, there would inevitably be some delay before the Bona Fide Error was discovered and the source of the error identified. Moreover, certain Bona Fide Errors may not be discovered until clearing submissions have been made. In such an instance, the T+1 requirement would be essential for Bona Fide Errors to surface. Furthermore, in recognizing that extraordinary circumstances may prevent compliance with the T+1 requirement, the Exchange submits that requiring approval of an officer of the Exchange to waive the T+1 requirement will allow the Exchange to verify that such extraordinary circumstances exist on a case-by-case basis and will consequently safeguard against the abuse of this exception.[14]

With respect to proposed paragraph (b)(2), the Exchange notes that the supporting documentation showing the objective facts and circumstances concerning the Bona Fide Error may differ, depending on the source and nature of the Bona Fide Error. Although it is difficult, if not impossible, to establish a general rule as to what would constitute sufficient documentation,[15] copies of verifiable communications (*e.g.,* email, instant message, recorded phone lines, internal order ticket) will usually be required by the Exchange when considering a request to cancel or adjust a trade made in Bona Fide Error.

With respect to proposed paragraph (b)(3), the Exchange notes that this requirement is designed to balance the need to adequately ascertain the intent of all parties to an erroneous trade and to address the practical difficulty of an executing broker Participant attempting to directly verify the consent of such parties where the executing broker Participant received an order from an authorized agent of the parties to the trade and not from the parties directly. Under these circumstances, the Exchange submits that it is reasonable that the consent to cancel or adjust an erroneous trade may be given by the authorized agent(s) of those parties. With that said, the Exchange notes that under no circumstances shall the Exchange consider a request to cancel or adjust a Bona Fide Error trade without documentation verifying the intent of the parties to the erroneous trade to cancel or adjust the trade.

If the executing broker Participant satisfies all of the requirements of proposed paragraph (b) to the satisfaction of the Exchange, a request to cancel a trade made in Bona Fide Error would be approved. However, if the executing broker Participant were to request a trade adjustment, the Exchange would take additional steps to

[12] Although the Exchange currently requires, inter alia, documentary proof of a Bona Fide Error prior to the Exchange considering a trade cancellation, there are no such requirements stated in the current CHX rules. *See supra* note 5.

[13] Prior to proposed Rule 9, Rule 9A, and Rule 11 becoming operative, the Exchange will provide all Participants with specific instructions, through a CHX Information Memo or the like, which will detail the ''form prescribed by the Exchange'' contemplated by proposed paragraph (b).

[14] The Exchange anticipates that the list of eligible officers would include the Chief Operating Officer, Chief Regulatory Officer, General Counsel, and Vice President of Market Regulation.

[15] *See supra* note 5.

validate the proposed adjustment, pursuant to proposed paragraph (c).

Proposed paragraph (c) provides that a trade adjustment shall only be made to the extent necessary to correct the Bona Fide Error (*i.e.,* to reflect the original terms of the order). The proposed paragraph continues by stating that prior to approving an adjustment, the Exchange shall validate that the proposed adjusted trade could have been executed in the Matching System at the time the trade was *initially* executed, in compliance with all applicable CHX and SEC rules. For instance, the validation process would require the Exchange to ensure that the proposed adjusted trade would not have improperly traded-through or ahead of interest resting on the Matching System (''CHX Book'') or a Protected Quotation of an external market in violation of Rule 611 of Regulation NMS.

Proposed paragraph (c) illustrates the benefit of a trade adjustment over a trade cancellation and the submission of an Error Correction Transaction.[16] Assuming that a corrective trade would qualify as an Error Correction Transaction and be exempt from the trade-through prohibition of Rule 611 of Regulation NMS, such a corrective trade would still be subject to the state of the CHX Book as of the time the corrective trade was submitted. However, a validated trade adjustment would allow the executing broker Participant to preserve the timestamp of the original trade. Allowing the executing broker Participant to choose a trade cancellation or adjustment would allow for greater flexibility in determining the best course of action to rectify Bona Fide Errors.

Proposed paragraph (d) clarifies that if the Exchange approves a request for a trade cancellation or adjustment, any corrective action(s) necessary to effectuate the cancellation or adjustment, including corrective entries into the Exchange's records and/or corrective clearing submissions to a Qualified Clearing Agency, shall be taken solely by the Exchange operations personnel. This provision serves as a contrast to proposed paragraph (b), which places the responsibility for satisfying the T+1 requirement upon the executing broker Participant that submitted the erroneous trade.

The following *Examples 1–3* illustrate how proposed Rule 9 would be applied under different scenarios.

*Example 1.* Assume that Broker A receives an order to buy 100,000 shares of security XYZ at $100.10/share. Assume that the Broker A wishes to match that order with a contra-side order that was placed with Broker A earlier that day. Assume that Broker A accurately conveys the terms of the cross order to Broker B, which is an executing broker Participant. However, assume that Broker B commits a good faith input error as to the price of the order and thus, an erroneous trade of 100,000 shares of security XYZ at $100.01 is executed on the Exchange.[17]

The price input error by Broker B would constitute a Bona Fide Error, pursuant to proposed Article 1, Rule 1(hh)(1) or (3), where the execution of the cross at the incorrect price is an ''inaccurate conveyance or execution of any term of an order, including, but not limited to, price'' and may also be the result of ''the incorrect entry of data into relevant systems.''

Moreover, if the parties to the erroneous trade wished to *cancel* the trade, Broker B would have to comply with the requirements of proposed Article 20, Rule 9(b) no later than 4:30 p.m. CST on T+1 or after T+1 with the approval of an officer of the Exchange. Specifically, pursuant to proposed paragraph (b)(1), Broker B must submit a Trade Error Report and a brief written request to cancel the erroneous trade. Also, pursuant to proposed paragraph (b)(2), Broker B must provide a brief explanation of the input error and produce documentation reflecting the original terms of the order. The documentation requirement could be satisfied, among other ways, by producing the internal order ticket from Broker A showing the price of $100.10 or a copy of a communication from Broker A to Broker B indicating the correct price and a timestamp prior to the CHX timestamp of the erroneous trade. In addition, pursuant to proposed paragraph (b)(3), Broker B would have to produce documentation evidencing consent to cancel the erroneous trade by the parties to the trade or, since Broker B did not interface directly with the parties to the erroneous trade, consent to cancel by Broker A, as authorized agent(s) of the parties to the trade.

*Example 2.* Assume the same as Example 1, except that the order price input error (*i.e.,* $100.01, instead of $100.10) was committed by Broker A as an authorized agent of the parties to the erroneous trade and not by Broker B. Assume, therefore, that Broker B received the order with the incorrect price and, in turn, submitted the cross order to the Matching System resulting in an erroneous trade.

In this Example, the Bona Fide Error could be subject to proposed Rule 9 because proposed paragraph .02 contemplates Bona Fide Errors committed by the ''customer of the Participant that submitted the erroneous trade.'' However, in requesting the trade cancellation, Broker B would be required to provide all of the information as required by proposed paragraph (b) in a manner similar to Example 1, except that in addition to identifying the price misconveyance and the source of the error as being Broker A, Broker B would have to produce documentation of the original terms of the order as relayed to Broker A from each of the parties to the erroneous trade. As a general rule, the documentation showing the correct order terms should be verifiable to an objective source. That is, if the Bona Fide Error was committed by the executing broker Participant, the documentation showing the correct terms should be from the Participant's customer. If the Bona Fide Error was committed by the customer of the Participant, then an internal order ticket or similar documentation showing the correct terms as related to the customer of the Participant, would suffice.

*Example 3.* Assume the same as Example 2, except that the parties to the erroneous trade wished to adjust the trade to comport it with the original terms of the order (*i.e.,* correct price of $100.10). Assume further that, at the time of the erroneous trade, the National Best Bid and Offer (''NBBO'') for security XYZ was $100.01 × $100.11 and the CHX Best Bid and Offer (''CHX BBO'') for security XYZ was at the NBBO. Assume also that the CHX best bid at $100.01 was for 100 shares and there are no undisplayed interests at or within the CHX BBO. In this case, like in Example 2, the executing broker Participant would have to satisfy the requirements of proposed paragraph (b).

In addition, pursuant to proposed paragraph (c), the Exchange would take the additional step of validating that the adjusted trade could have been executed in the Matching System at the time the erroneous trade was initially executed, in compliance with all applicable CHX and SEC rules. Thus, based on the aforementioned snapshot of the NBBO and the CHX BBO at the time of the erroneous trade, an adjustment of the price of the erroneous trade from $100.01 to the correct price of $100.10 would have complied with SEC and CHX rules, as of the time of the erroneous trade. Specifically, the adjusted trade would have complied

[16] *See supra* note 4.

[17] Assuming that the reference price for security XYZ is approximately $100.10 per share, the erroneous trade would not qualify for cancellation as a Clearly Erroneous Transaction because the erroneous price of $100.01 does not meet the 3% threshold. *See* CHX Article 20, Rule 10(c).

with Rule 611 of Regulation NMS in that it would not have constituted a trade-through of a Protected Quotation of an external market as the adjusted price of $100.10 would have been within the NBBO of $100.01 × $100.11 at the time of the erroneous trade. Moreover, the adjusted trade would have complied with Article 20, Rule 8 in that the adjusted trade would not have improperly traded-through or ahead of interest resting on the CHX Book as the adjusted price of $100.10 would have been within the CHX BBO of $100.01 × $100.11.[18]

As discussed above, Example 3 illustrates the primary benefit of a trade adjustment over a trade cancellation then corrective trade, which is to preserve the original timestamp of the trade. This is important because the NBBO and the CHX Book may have changed to the extent that a trade with the correct terms may no longer be executable. Even if the corrective trade qualifies as an Error Correction Transaction [19] and is thereby able to trade-through the NBBO, if a subsequent order were to have posted to the CHX Book after the erroneous trade executed at a price that was the same as or better than the corrective trade, the corrective trade would nevertheless be blocked by the CHX Book.[20] Trade adjustments avoid this problem by allowing the original trade to stand with adjustments to the trade to comport it to the original terms of the order, so long as the adjusted trade could be validated pursuant to proposed paragraph (c). Thus, the prevailing market and the state of the CHX Book as of the time of the adjustment become irrelevant.

The Exchange submits that allowing such adjustments of Bona Fide Error trades would not harm other market participants because the result of an adjusted trade is identical to the original trade having been executed correctly. Indeed, trade adjustments ensure that parties to a trade are not penalized for Bona Fide Errors committed by authorized agent(s) or the executing broker Participant that submitted the erroneous trade. Furthermore, the Exchange submits that Bona Fide Error trade adjustments would be beneficial to the market as a whole in that it would prevent the excessive reporting of trades to the Consolidated Tape.[21] When an erroneous trade is submitted, cancelled, then a corrective trade is submitted, the Consolidated Tape would reflect two order executions, thereby skewing the activity in that NMS stock. In contrast, a trade adjustment to the erroneous trade would result in only the original trade being reported. In addition, the Exchange notes that a trade adjustment would not harm other market participants because a trade adjustment is tantamount to the original trade having been made without Bona Fide Errors. That is, if the trade were adjusted to the correct terms, other market participants would be in the same position as if the trade had originally executed at the correct terms.

Finally, proposed paragraph (e) mirrors current Article 20, Rule 9(b)(5) which provides that failure to comply with the provisions of this Rule shall be considered conduct inconsistent with just and equitable principles of trade and a violation of Article 9, Rule 2.[22] As the Exchange intends for the functionality provided by proposed Rule 9 to be utilized sparingly, the Exchange will continue its current market surveillance procedures to reasonably ensure that both Bona Fide Error trade cancellations and adjustments are properly utilized from both a basis and frequency perspective.

**Proposed Article 20, Rule 9A ''Error Correction Transactions''**

Proposed Rule 9A adopts requirements for Error Correction Transactions (''ECT''), which are currently accepted by the Exchange, but the requirements of which are not detailed in the CHX rules.[23] The proposed language virtually mirrors key portions of the ''Order Exempting Certain Error Correction Transactions From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934'' (''ECT order'').[24]

Specifically, proposed paragraph (a) provides that a Participant may submit an ECT to remedy the execution of customer orders that have been placed in error, provided that the following requirements are satisfied:

(1) The erroneous transaction was the result of a ''Bona Fide Error,'' as defined under proposed Article 1, Rule 1(hh);

(2) The Bona Fide Error is evidenced by objective facts and circumstances and the Participant maintains documentation of such facts and circumstances;

(3) The Participant recorded the ECT in its error account;

(4) The Participant established, maintained, and enforced written policies and procedures that were reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of an ECT to correct the error in compliance with this Rule; and

(5) The Participant regularly surveiled to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and took prompt action to remedy deficiencies in such policies and procedures.

Proposed paragraph (b) states that an ECT may execute without the restrictions of the trade-through prohibition of Rule 611, provided that the ECT is marked with a special Bona Fide Error trade indicator.[25] Proposed paragraph (b) further states that this exemption applies only to the ECT itself and does not, for example, apply to any subsequent trades made by a Participant to eliminate a proprietary position connected with the ECT. Aside from the language requiring that ECTs be marked with a special trade indicator, the proposed language virtually mirrors language from the ECT order.

Similar to proposed Article 20, Rule 9(e), proposed paragraph (c) provides that failure to comply with the provisions of this Rule shall be considered conduct inconsistent with

[18] Current Article 20, Rule 8(d)(1) states that ''except for certain orders which shall be executed as described in Rule 8(e), below, an incoming order shall be matched against one or more orders in the Matching System, in the order of their ranking, at the price of each resting order, for the full amount of shares available at that price, or for the size of the incoming order, if smaller.''

[19] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007) (Order Exempting Certain Error Correction Transactions From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934).

[20] For instance, where the order posted to the CHX Book after the erroneous trade and the corrective trade are priced the same, a corrective trade that qualifies for special handling as Cross With Size would execute ahead of such resting orders at the same price. *See* Article 20, Rule 2(g)(1).

[21] The Exchange does not submit that ''excessive'' reporting to the tape would reflect inaccurate information. Rather, the Exchange believes that if trades were allowed to be adjusted under the circumstances proposed by this proposed rule filing, the tape could more efficiently represent market activity (*e.g.,* reporting the initial trade and an adjustment to that trade, as opposed to reporting the initial trade, plus a cancellation of that trade, and a replacement trade).

[22] CHX Article 9, Rule 2 (Just and Equitable Trade Principles) states as follows:

No Participant, Participant Firm or partner, officer, director or registered employee of a Participant Firm shall engage in conduct or proceeding inconsistent with just and equitable principles of trade. The willful violation of any provision of the Exchange Act or any rule or regulation thereunder shall be considered conduct or proceeding inconsistent with just and equitable principles of trade.

[23] The Exchange currently accepts ECTs, provided that, *inter alia,* the ECT is marked by a special Bone Fide Error trade indicator and the Participant submits a Trade Error Report to the Exchange.

[24] *See supra* note 19.

[25] *See supra* note 23.

just and equitable principles of trade and a violation of Article 9, Rule 2.[26]

Within the context of the proposed CHX trade cancellation and adjustment matrix, proposed Rule 9A addresses a few specific situations. First, ECTs are typically used to submit corrective trades after a trade based on Bona Fide Error had been cancelled or to submit a trade where the original order was never submitted (*i.e.,* a ''missed market'' situation).[27] ECTs can also provide a corrective remedy where there is a Bona Fide Error trade, as defined under proposed Article 1, Rule 1(hh), but a trade cancellation or adjustment pursuant to proposed Rule 9 is not possible, due to the fact that there is not unanimous consent of all parties to the trade to cancel or adjust (*e.g.,* Bona Fide Error was committed by the executing broker Participant with respect to a single-sided order). In such a case, the erroneous trade would be taken into the error account of the executing broker Participant, as opposed to being cancelled. However, if the erroneous trade were cancelled as a Clearly Erroneous Transaction [28] without the unanimous consent of all parties to the trade, an ECT could be affected without the executing broker Participant having to take the erroneous trade into its error account. Thus, proposed Rule 9A, read together with current Article 20, Rule 9 and Rule 10, contemplates a wide array of remedies to correct Bona Fide or Obvious Errors.

**Proposed Article 20, Rule 11 ''Cancellation or Adjustment of Stock Leg Trades''**

The Exchange proposes to adopt Article 20, Rule 11 (''Cancellation or Adjustment of Stock Leg Trades'') to expand and clarify current Article 20, Rule 9(b), which outlines the requirements for the cancellation of the stock leg of Stock-Option orders. In addition to adopting much of current Article 20, Rule 9(b), proposed Rule 11 expands the circumstances under which stock leg trades may be cancelled, adopts new requirements to allow for the adjustment of stock leg trades and includes Stock-Future orders within the purview of the proposed Rule.

Proposed Rule 11(a) adopts current Article 20, Rule 9(b)(6) and provides a general overview of the scope of the proposed Rule. Specifically, it states that unless otherwise expressly prohibited by the Exchange's rules, a trade representing the stock leg of a Stock-Option combination order, as defined under proposed Article 1, Rule 1(ii) or a Stock Future combination order, as defined under Article 1, Rule 1(jj), may be subject to cancellation or adjustment by the Exchange pursuant to proposed Rule 11, if the stock leg trade was marked by a special trade indicator when it was originally submitted to the Matching System.[29] The proposed paragraph further clarifies that if the stock leg trade was not originally marked by a special trade indicator, the trade shall not be eligible for cancellation or adjustment, notwithstanding compliance with the other requirements of this Rule.

Proposed Article 1, Rule 1(ii) provides a definition for ''Stock-Option'' combination orders. Specifically, the proposed definition of ''Stock-Option'' order simplifies current Article 20, Rule 9(b)(2) [30] and provides that ''Stock-Option'' is a combination order where at least one component is a cross order for a stated number of units of an underlying or related security coupled with the purchase or sale of options contract(s) on the opposite side of the market representing at least the same number of units as the underlying or related security portion of the order. The Exchange submits that this simplified definition encompasses the hedging scenarios described in current Article 20, Rule 9(b)(2)(i) and (ii), as illustrated in the examples below.

The Exchange notes that all cross orders marked as Qualified Contingent Trades (''QCTs'') [31] received by the Matching System would qualify as a Stock-Option or Stock-Future order and thus be eligible for cancellation or adjustment pursuant to proposed Rule 11.[32] However, it is important to note that not every Stock-Option or Stock-Future order would qualify as a QCT because the definition of Stock-Option/Stock-Future does not require the contemporaneous or near contemporaneous execution of the different components. Therefore, maintaining the distinction between QCT and Stock-Option/Stock-Future orders is important, in light of the fact that a stock leg trade that qualifies as QCT is exempt from Rule 611(a) of Regulation NMS, whereas a stock leg trade that is part of a Stock-Option or Stock-Future combination order may be cancelled or adjusted pursuant to proposed Rule 11.

The following *Examples 1–3* illustrate which combination orders would comport with the proposed definition of ''Stock-Option'' orders.

*Example 1.* Assume that a combination order is presented as follows and the contra-parties to the stock and options legs are the same:

Buy 1,000,000 shares of XYZ
Sell 10,000 XYZ Jan 50 call options

In this Example, the stock position on the long side of the market is hedged on a share-by-share basis by the options position on the short side of the market, because the stock position represents the same number of units as the options position (*i.e.,* 1,000,000 shares of XYZ on the long side against 10,000 XYZ call options representing 1,000,000 shares of XYZ on the short side). Thus, this combination order is a ''Stock-Option'' order as defined under proposed Article 1, Rule 1(ii), because the short side call options represent ''at least the same number of units as the underlying or related security portion of the order.''

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[26] *See supra* note 22.

[27] The Exchange notes that ''absent a bona fide error as defined above, the exemption does not apply to a broker-dealer's mere failure to execute a not-held order in accordance with a customer's expectations.'' Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926, 32927 (June 14, 2007), note 14.

[28] *See* CHX Article 20, Rule 10.

[29] Current Article 20, Rule 9(b)(6) requires ''any transactions cancelled pursuant to the provisions of this section must be identified by a special trade indicator.''

The purpose of the special trade indicator is to mark a stock leg trade as being part of a Stock-Option order and consequently notifies the market after execution that the trade may be cancelled, as the trade is contingent upon the execution of non-stock legs that comprise the total Stock-Option combination order.

[30] Current Article 20, Rule 9(b)(2) states as follows:

For purposes of this Rule, a 'stock-option order' is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (i) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta-neutral or delta-hedged position or (ii) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying or related security portion of the order.

[31] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (''Order Granting an Exemption for Qualified Contingent Trades From Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934''); see also Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 4, 2008) (''Order Modifying the Exemption for Qualified Contingent Trades From Rule 611(a) of Regulation NMS Under the Securities Exchange Act of 1934''); *see also* Article 1, Rule 2(b)(2)(E).

[32] The QCT requirement that ''the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other component of the contingent trade'' is similar to the proposed requirement for Stock-Option/Stock-Future orders that the stock leg trade be couple with ''options contract(s) on the opposite side of the market representing at least the same number of units as the underlying or related security portion of the order.'' *See* CHX Article 1, Rule 2(b)(2)(E).

*Example 2.* Assume that a combination order is presented as follows and the contra-parties to the stock and options legs are the same:

Buy 470,000 shares of XYZ
Sell 10,000 XYZ Jan 50 call options

Assume further that the call options have a delta value of 0.47. In this Example, the stock position on the long side of the market is hedged on a share-by-share basis by the options position on the short side of the market, because the stock position represents fewer units than the options position (*i.e.,* 470,000 shares of XYZ on the long side against 10,000 XYZ call options representing 1,000,000 shares of XYZ on the short side). Thus, this combination order is a ''Stock-Option'' order as defined under proposed Article 1, Rule 1(ii), because the short side call options represent ''at least the same number of units as the underlying or related security portion of the order.'' Moreover, this Example illustrates that a delta-neutral hedge will fall within the proposed definition. That is, since a delta value can never exceed 1, a delta-neutral hedge will never result in a stock position being less than hedged on a share-by-share basis by the options position.

*Example 3.* Assume that a combination order is presented as follows and the contra-parties to the stock and options legs are the same:

Buy 2,000,000 shares of XYZ
Sell 10,000 XYZ Jan 50 call options

In this Example, the stock position on the long side of the market is not hedged on a share-by-share basis by the options position on the short side of the market, because the stock position represents a greater number of units than the options position (*i.e.,* 2,000,000 shares of XYZ on the long side against 10,000 XYZ call options representing 1,000,000 shares of XYZ on the short side). Thus, this combination order is not a ''Stock-Option'' order as defined under proposed Article 1, Rule 1(ii), because the short side call options do not represent ''at least the same number of units as the underlying or related security portion of the order.''

In sum, Examples 1–3 illustrate that if the long (short) stock position is hedged on at least a share-by-share basis by the short (long) options position(s), the combination order will meet the proposed definition of ''Stock-Option.'' Moreover, the following *Examples 4–7* illustrate situations where there are more than one options positions, such as the scenario described under current Article 20, Rule 9(b)(2)(ii) and how such multiple options positions would fit under the proposed definition of ''Stock-Option'' order.

*Example 4.* Assume that a combination order is presented as follows and the contra-parties to the stock and options legs are the same:

Buy 1,000,000 shares of XYZ
Sell 10,000 XYZ Jan 50 call options
Buy 10,000 XYZ Jan 50 put options

This is an example of the type of order contemplated by current Article 20, Rule 9(b)(2)(ii). That is, the positions in this Example 4 represent the purchase or sale of an equal number of put and call option contracts (*i.e.,* 10,000 contracts each), each having the same exercise price (*i.e.,* $50.00), expiration date (*i.e.,* January) and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying or related security portion of the order (*i.e.,* each option represents 1,000,000 shares on the short side of the market opposite of the 1,000,000 shares on the long side market).

This order fits within the proposed definition of ''Stock-Option'' because each one of the options legs are on the opposite side of the market from the stock leg and each represent ''at least the same number of units as the underlying or related security portion of the order.''

*Example 5.* Assume that a combination order is presented as follows and the contra-parties to the stock and options legs are the same:

Buy 1,000,000 shares of XYZ
Sell 6,000 XYZ Jan 50 call options
Buy 4,000 XYZ Jan 50 put options

This order also fits within the proposed definition of ''Stock-Option'' because the stock position on the long side of the market is hedged on a share-by-share basis by the sum of the two options position on the short side of the market, because the stock position represents the same number of units as the options position (*i.e.,* buy 1,000,000 shares of XYZ on the long side against sell 6,000 XYZ call options and buy 4,000 XYZ put options, together representing 1,000,000 shares of XYZ on the short side). Thus, this combination order is a ''Stock-Option'' order as defined under proposed Article 1, Rule 1(ii), because the short side call and put options together represent ''at least the same number of units as the underlying or related security portion of the order.''

Another way to visualize this trade is to break up the order into two separate Stock-Option orders:

| Stock-Option Order #1 | Stock-Option Order #2 |
|---|---|
| Buy 600,000 shares of XYZ. | Buy 400,000 shares of XYZ. |
| Sell 6,000 XYZ Jan 50 call options. | Buy 4,000 XYZ Jan 50 put options. |

Each one of the stock leg components are hedged on a share-by-share basis by options contracts on the opposite side of the market representing exactly the same number of shares as the stock leg.

*Example 6.* Assume that a combination order is presented as follows and the contra-parties to the stock and options legs are the same:

Buy 1,000,000 shares of XYZ
Sell 5,000 XYZ Jan 50 call options
Sell 5,000 XYZ Jan 50 put options

In this Example, the stock position and the XYZ Jan 50 put options are on the long side of the market, while the XYZ Jan 50 call is on the short side of the market. Since the proposed definition of ''Stock-Option'' is only concerned about the stock position being hedged by options on the opposite side of the market, and not additional options positions on the same side of the market as the stock position, any options positions on the same side of the market as the stock position would be ignored. After excluding the XYZ Jan 50 put options from the analysis, we are left with a stock position on the long side that is not hedged on a share-by-share basis by the options position on the short side, because the stock position represents a greater number of units than the options position (*i.e.,* buy 1,000,000 shares of XYZ on the long side against sell 5,000 XYZ call options representing 500,000 shares of XYZ on the short side). Thus, this combination order is not a ''Stock-Option'' order as defined under proposed Article 1, Rule 1(ii), because the short side call options do not represent ''at least the same number of units as the underlying or related security portion of the order.''

*Example 7.* Assume the same as Example 6, except that the call options on the short side of the market were for 20,000 contracts representing 2,000,000 shares of XYZ. As in Example 6, the put options on the long side of the market would be ignored. We are then left with a stock position on the long side that is smaller than the call options position on the short side (*i.e.,* buy 1,000,000 shares of XYZ on the long side against 20,000 XYZ call options representing 2,000,000 shares of XYZ on the short side). Thus, this combination order is a ''Stock-Option'' order as defined under proposed Article 1, Rule 1(ii), because the short side call options represent ''at least the same number of units as the underlying or related security portion of the order.''

With respect to the proposed definition of ''Stock-Future'' order, proposed Article 1, Rule 1(jj) provides that it is a combination order where at least one component is a cross order for a stated number of units of an underlying or a related security coupled with the purchase or sale of futures contract(s) on the opposite side of the market representing at least the same number of units of the underlying or related security portion of the order.[33] Similar to the proposed definition for ''Stock-Option'' orders, this definition establishes a bright-line requirement for the size of the futures transaction, so as to prevent misuse of this proposed Rule (*i.e.,* the use of *de minimis* amount of future contracts to allow a stock order to be subject to cancellation or adjustment). Given that Stock-Future orders can also be QCTs, the Exchange submits that making the definitions of ''Stock-Option'' and ''Stock-Future'' orders nearly identical is appropriate.

*Cancellation of Stock Leg Trades*

Proposed Rule 11(b) outlines the requirements for the requests to cancel a stock leg trade. Specifically, paragraph (b)(1) incorporates and expands the first half of current Article 20, Rule 9(b)(1),[34] and provides that the Exchange may approve a request to cancel a stock leg trade that was originally marked by a special trade indicator and take the corrective action(s) necessary to effectuate such a cancellation, provided that the following items are submitted to the Exchange, in a form prescribed by the Exchange, by the Participant that submitted the stock leg trade. It further provides that the requirements of this paragraph (b) must be complied with to the satisfaction of the Exchange, before a stock leg trade cancellation pursuant to this Rule may be approved or any corrective action may be taken. In addition, the Exchange shall have sole discretion in determining whether the requirements of this Rule have been satisfied. Thereunder, proposed subparagraphs (A)–(C) require the following:

(A) *Timely written request.* The Participant that submitted the stock leg trade shall submit a written request for cancellation, including all information and supporting documentation required by this Rule, no later than 4:30 p.m. CST on T+1. The Exchange will retain a copy of the written request, information, and supporting documentation. In extraordinary circumstances, a cancellation may be requested and effected after T+1, with the approval of an officer of the Exchange;

(B) *Qualified Cancellation Basis.* The Participant that submitted the stock leg trade shall identify the Qualified Cancellation Basis, as defined under proposed paragraph (b)(2). The Participant shall also provide and maintain supporting documentation showing the objective facts and circumstances supporting the Qualified Cancellation Basis; and

(C) *All parties consent.* The Exchange shall verify that the cancellation is requested by all parties involved in the stock leg trade (or by an authorized agent of those parties). The Participant that submitted the stock leg trade shall provide supporting documentation evidencing this consent.

Similar to proposed Rule 9(b)(1), proposed subparagraph (A) sets a time limit for requests to cancel a stock leg trade of a Stock-Option/Stock-Future order. The time requirement is short enough to encourage quick resolution, while being long enough to accommodate unforeseen circumstances. Thus, similar to proposed Rule 9(b)(1), the Exchange will not consider any request to cancel a stock leg trade, much less take any corrective action to effectuate such a cancellation, until all of the requirements of proposed Rule 11 are satisfied.

Similar to proposed Rule 9(b)(2), proposed subparagraph (B) requires the Participant that submitted the stock leg trade to identify the specific reason for the requested cancellation, which in the context of Stock-Option/Stock-Future combination orders would at least be one of the ''Qualified Cancellation Basis,'' as discussed in detail below. Moreover, like proposed Rule 9(b)(2), the Participant that submitted the stock leg trade is responsible for providing all documentation that supports the Qualified Cancellation Basis. For instance, if the reason for the stock leg trade cancellation is that the non-stock leg executed at a price other than what was originally agreed, the Participant that submitted the stock leg trade would have to produce documentation reflecting the original non-stock leg terms and a copy of the original order ticket that reflects the non-stock leg trade as actually executed.

Similar to proposed Rule 9(b)(3), proposed subparagraph (C) requires the Exchange to verify that the request to cancel the stock leg trade is consented to by the parties to the stock leg trade or by an authorized agent(s) of the parties. However, the Participant that submitted the stock leg trade must provide the supporting documentation evidencing this consent to cancel (*e.g.,* email or instant message) from either the parties to the trade or by an authorized agent of the parties.

As referred to in proposed Rule 11(b)(1)(B) above, proposed Rule 11(b)(2) lists the ''Qualified Cancellation Basis'' as follows:

(A) A non-stock leg executed at a price/quantity or was adjusted to a price/quantity other than the price/quantity originally agreed upon by all of the parties to the Stock-Option or Stock-Future order;

(B) A non-stock leg could not be executed; or

(C) A non-stock leg was cancelled by the exchange on which it was executed.

While proposed subparagraph (C) substantively mirrors current Article 20, Rule 9(b)(1)(ii), proposed subparagraphs (A) and (B) expands the permissible circumstances where a stock leg trade may be cancelled.

Proposed subparagraph (A) is based on current Article 20, Rule 9(b)(1)(i), but expands its scope. Specifically, proposed subparagraph (A) eliminates the overly narrow reference to ''market conditions'' and includes execution of the non-stock leg at a size other than what was originally agreed as a basis to cancellation of the stock leg. That is, in addition to situations where market conditions prevent the execution of the non-stock leg at the originally agreed price (*e.g.,* NBBO changes), the proposed subparagraph (A) contemplates situations where the parties voluntarily adjust the terms of non-stock leg trade or modify the terms of the non-stock leg order prior to execution, with the intention of modifying the original stock leg terms. If all of the components are executed at the modified terms, there would be no need to cancel trades. However, given the latency inherent in the Stock-Option/Stock-Future order handling and execution process,[35] it is frequently the

[33] For example, a trade on the CHX in the SPDR S&P 500 ETF Trust (symbol SPY) may be related to a transaction in an S&P 500 futures contract.

[34] Current CHX Article 20, Rule 9(b)(1) states as follows:

Unless otherwise expressly permitted by the Exchange's rules, a trade representing the execution of the stock leg of a stock-option order may be cancelled at the request of all Participants that are parties to that trade if (i) market conditions in any of the non-Exchange market(s) prevent the execution of the option leg(s) at the price agreed upon by the parties to the options leg, or (ii) the options leg(s) is cancelled by the exchange on which it was executed.

[35] When parties to a Stock-Option/Stock-Future order agree to the terms, the individual components are virtually never executed simultaneously, due to the fact that derivative legs and stock legs are executed on different venues. Thus, the order packaging process frequently involves numerous brokers relaying order instructions for component orders that are to be executed at different venues. In the situation where a Stock-Option order originates on the floor of an options exchange or a Stock-Future order originates on the floor of a

case that modification instructions fail to reach the Participant that submitted the stock leg trade on the Exchange, prior to the stock leg executing at the original terms.

For instance, a voluntary modification of the terms of a Stock-Option order may arise if one or more parties to the order withdrew from the order prior to execution of any components. In such an instance, the remaining parties would have to either cancel the entire Stock-Option order or attempt to modify the terms of the order to compensate for the lost parties. If the parties chose to attempt to modify the terms of the Stock-Option order, there may be a situation where the non-stock leg would execute at the modified terms, but the stock leg trade would execute at the original terms, before the modified stock leg terms were received by the Participant that submitted the stock leg trade. Thus, the stock leg trade would likely be inadequately hedged [36] by the options position. In the worst case scenario, the stock leg may have traded-through a Protected Quotation without being ''fully hedged,'' as required by the QCT exemption.[37] In such a case, the parties may wish to either adjust the stock leg trade, pursuant to proposed Article 20, Rule 11(c), as discussed in detail below, or simply cancel the original stock leg trade and replace the trade with a stock leg trade that is adequately hedged by the modified non-stock leg trade.[38] Thus, by expanding current Article 20, Rule 9(b)(1)(i) to include all situations where a non-stock leg executed at a price/quantity other than what was originally agreed, the communication latency issues can be effectively mitigated and market participants can be protected from being penalized for engaging in *bona fide* market activity.

Proposed subparagraph (B) adopts a new Qualified Cancellation Basis where a stock leg trade may be cancelled if the non-stock leg was never executed. There are numerous reasons why a non-stock leg trade may not be executed. For instance, market conditions may block the execution of an options leg at the originally agreed price, and instead of executing at a price other than what was originally agreed, the parties may simply cancel the non-stock leg order. Also, one or more parties to a Stock-Option/Stock-Future order may decide not to participate in the Stock-Option order prior to any of the component orders being executed. In this case, instead of trying to modify the terms of the Stock-Option order to compensate for the lost parties, as discussed above, the remaining parties may decide that it would be best to cancel the entire order. If the parties decide to cancel the Stock-Option order, the cancel messages may reach the respective executing brokers in time, thus obviating the need to cancel trades. However, due to the inherent communication latency,[39] it is frequently the case that the non-stock leg order is cancelled prior to execution, but the cancel message does not reach the Exchange prior to the stock leg being executed. In such a situation, it would be patently unfair to require the parties to the Stock-Option/Stock-Future order to maintain a stock position that is no longer hedged by a non-stock position, especially if the stock leg relied on the QCT exemption to trade-through a Protected Quotation of an external market.

Moreover, the Exchange submits that any potential abuse of proposed subparagraph (B) is reasonably eliminated by the requirement that *all* parties to the Stock-Option order consent to the stock leg trade cancellation. Thus, since no one contra-party may act unilaterally to cancel a trade, this would prevent any one contra-party from cancelling a stock leg trade where stock prices or options prices moved in favor of that party. It logically flows that if prices move in favor of one party, the prices have moved to disadvantage of the contra-party. Under such circumstances, the contra-party would never agree to a stock leg trade cancellation.

The Exchange submits that the proposed Qualified Cancellation Bases, when considered as a whole, adequately address the latency issues that affect the Stock-Option/Stock-Future order packaging process. By expanding the permissible bases for cancelling stock leg trades, the problems arising from these latency issues can be resolved by allowing market participants to step away from unwanted stock positions when certain contingencies are not realized.

*Adjustments of Stock Leg Trades*

The Exchange submits that when a non-stock leg executes at different terms than originally agreed or is adjusted by the exchange, it may be more appropriate to permit the adjustment of the stock leg trade to maintain the original aggregate cash flow [40] or original hedge ratio of the Stock-Option or Stock-Future order that was agreed upon by all of the parties, as opposed to cancelling the stock leg trade and requiring the parties to attempt to execute the entire package again. So long as the adjustment is consistent with original intent of the parties that can be reasonably ascertained, the Exchange submits that allowing adjustments can prove to be a valuable tool in promoting order flow to the Exchange and preventing the excessive reporting of activity to the tape.[41]

Proposed paragraph (c) adopts new requirements to allow for the adjustment of a stock leg trade that is a component of a Stock-Option/Stock-Future order under specified circumstances. The format of proposed paragraph (c) is modeled on proposed paragraph (b), with additional substance to address the added complexity of adjusting trades. Similar to proposed paragraph (b)(1), proposed paragraph (c)(1) provides that the Exchange may approve a request to adjust a stock leg trade that was originally marked by a special trade indicator and take the corrective action(s) necessary to effectuate such an adjustment, provided that the following items are submitted to the Exchange, in a form prescribed by the Exchange, by the Participant that submitted the stock leg trade. It further states that the requirements of this proposed paragraph (c) must be complied with, to the satisfaction of the Exchange, *before* a stock leg trade adjustment pursuant to this Rule may be approved or any corrective action may be taken. Thereunder, proposed subparagraphs (A)–(D) require the following:

(A) *Timely written request.* The Participant that submitted the stock leg trade shall submit a written request for adjustment, including all information and supporting documentation required by this Rule, no later than 4:30 p.m. CST

futures exchange, the relaying of stock leg order information will likely go from the floor brokers to an inter-dealer broker, who in turn will relay the information to an executing broker Participant. In such a case, there will be an inherent latency in communication in the process.

[36] An ''inadequate'' hedge means a hedge ratio that deviates from what has been agreed by the parties to the Stock-Option/Stock-Future order or a hedge that is not a ''fully hedged'' position, as required and defined by the QCT exemption. *See supra* note 31.

[37] *See supra* note 31.

[38] The parties may decide that it would be more desirable to cancel the stock leg trade, given the additional requirements that must be met for a trade adjustment to be approved pursuant to proposed Article 20, Rule 11(c), especially if the replacement stock leg trade would not trade-through a Protected Quotation of an external market.

[39] *See supra* note 35.

[40] The ''original aggregate cash flow'' of a Stock-Option or Stock Future order is the absolute value of the difference between the cash flow of the proposed stock leg trade and the proposed non-stock leg trade had the Stock-Option or Stock-Future order been executed as originally intended. *See infra* Example 8.

[41] *See supra* note 21.

on T+1. The Exchange will retain a copy of the written request, information, and supporting documentation. In extraordinary circumstances, an adjustment may be requested and effected after T+1, with the approval of an officer of the Exchange;

(B) *Qualified Adjustment Basis.* The Participant that submitted the stock leg trade shall identify the Qualified Adjustment Basis, as defined under proposed paragraph (c)(2). The Participant shall also provide and maintain supporting documentation showing the objective facts and circumstances supporting the Qualified Adjustment Basis;

(C) *All parties consent.* The Exchange shall verify that the adjustment is requested by all parties involved in the stock leg trade (or by an authorized agent of those parties). The Participant that submitted the stock leg trade shall provide supporting documentation evidencing this consent; and

(D) *Additional Documentation.* The Participant that submitted the stock leg trade shall submit a proposed Adjusted Stock Price or Adjusted Stock Quantity, as detailed under proposed paragraph (c)(3).

Similar to proposed paragraph (b)(1)(A)–(C), proposed subparagraphs (c)(1)(A)–(C) establishes time, basis, consent, and documentation requirements for proposed stock leg trade adjustments. Proposed subparagraph (D) establishes an additional documentation requirement for proposed stock leg trade adjustments that requires the Participant that submitted the stock leg trade to provide certain information and calculations to show that the proposed adjustment are necessary and appropriate (*i.e.,* Adjusted Stock Price for price adjustments and Adjusted Stock Quantity for quantity adjustments) and comport with the requirements of proposed paragraph (c)(3).

As referred to in proposed Rule 11(c)(1)(B) above, proposed paragraph (c)(2) provides that a ''Qualified Adjustment Basis'' exists if a non-stock leg executed at a price/quantity or was adjusted to a price/quantity other than the price/quantity originally agreed upon by all of the parties to the Stock-Option or Stock-Future order. Proposed paragraph (c)(2) is identical to proposed paragraph (b)(2)(A). If the non-stock leg were to execute or be adjusted to price/quantity other than what was originally agreed, the parties to the stock leg trade would have the choice of either cancelling the stock leg trade or adjusting the stock leg trade to match the original aggregate cash flow or the original hedge ratio of the Stock-Option or Stock-Future order. Adjustments under such circumstances would obviate the need to cancel component trades that have been properly executed and would be a more efficient use of market resources. Moreover, adjustments would also have the additional benefit of avoiding excessive reporting to the tape.[42]

In order to reasonably ensure that adjustments to the stock leg trade are made consistently and comport to the original intent of the parties, a detailed methodology for determining and verifying exact adjusted terms is essential. To this end, proposed paragraph (c)(3) provides that the Participant that submitted the stock leg trade may request only one of the following adjustments per Stock-Option or Stock-Future order. Moreover, pursuant to proposed paragraph (c)(1)(D), the Participant shall provide the applicable information and calculations to the Exchange in a form prescribed by the Exchange.

Proposed subparagraph (A) details the necessary calculations for Adjusted Stock Price, where a non-stock leg executed at a price or was adjusted to a price other than the price originally agreed upon by all of the parties to the Stock-Option or Stock-Future order and the parties wish to maintain the original aggregate cash flow of the Stock-Option or Stock-Future order. Thereunder, subparagraphs (A)(i)–(iv) require the Participant that submitted the stock leg trade to submit:

(i) the aggregate cash flow of the Stock-Option or Stock-Future order based on trade prices had it been fully executed at the original terms agreed upon by all of the parties to the Stock-Option or Stock-Future order, prior to any component trade having been executed;

(ii) the actual aggregate cash flow of the executed non-stock leg(s);

(iii) the Comparable Stock Price (''CSP'') for the stock leg which would result in exactly the same aggregate cash flow as indicated under subparagraph (i);

(iv) the proposed Adjusted Stock Price (''ASP'') that comports with the following formula:

$(CSP - \$0.015) \leq ASP \leq (CSP + \$0.015)$

The following *Examples 8 and 9* illustrate how the requirements of proposed subparagraph (A) could be met.

*Example 8.* Assume that the current market value for XYZ Jan 50 call options is $4.50/share, the call options have a delta of 0.47, and the current market value for security XYZ is $50.00. Assume that Floor Broker A and Floor Broker B agree to a Buy-Write Stock-Option combination order and wish to employ a delta-neutral hedge (*i.e.,* hedge ratio of 0.47) against the options positions. Specifically, the parties agree that Floor Broker A will buy 10,000 XYZ Jan 50 calls from Floor Broker B for $4.50 per share and Floor Broker A will sell to Floor Broker B 470,000 shares of XYZ at $50.00/share. Assume that the parties are on the floor of an options exchange and forward the terms of the stock leg order to an inter-dealer broker, who then forwards the order to an executing broker Participant on the Exchange.

Assume that within a few seconds of the stock order being relayed to the interdealer broker, market conditions prevent the execution of the options leg at $4.50/share (*e.g.,* the NBBO for options contract changed from $4.45 × $4.55 to $4.35 × $4.40).[43] Due to time and customer considerations, the parties agree to execute the options leg at the NBO of $4.40/share. At nearly the same time, the parties relay the new stock leg terms to the interdealer broker for transmission to the executing broker Participant. However, before the message reaches the Exchange Participant, the stock leg trade was already executed on the Exchange at the original terms of 470,000 shares of XYZ at $50.00/share.

The Participant that submitted the stock leg trade (*i.e.,* the executing broker Participant) now wishes to adjust only the price of the stock leg trade to ensure that the aggregate cash flow remains the same as originally agreed.[44] In addition to meeting the requirements of proposed paragraph (c)(1) and (c)(2), the Participant would have to submit the following documentation and calculations:

Pursuant to proposed subparagraph (A)(i), the Participant would have to provide documentation to the Exchange that shows the aggregate cash flow for the Stock-Option order as originally agreed. Specifically, the Participant would have to show that the cash flow

[42] *Id.*

[43] The Exchange notes that although market conditions preventing the execution of the non-stock leg at a price other than what was originally agreed is one example of a Qualified Adjustment Basis, proposed Rule 11(c)(2) contemplates any situation where the non-stock leg executed at a price other than what was originally agreed, provided that the other requirements of proposed Rule 11 are met.

[44] If the executing broker Participant wished to adjust the quantity of the stock leg trade to maintain a delta-neutral hedge based on the new delta at $4.40 per share, the executing broker Participant would have satisfy the requirements of proposed subparagraph (C), which is discussed in detail below.

for the options leg had it executed at the original terms to be *$4,500,000* (*i.e.,* where 10,000 contracts = 1,000,000 underlying shares; 1,000,000 shares × $4.50/share = $4,500,000 premium to be paid by Floor Broker A to Floor Broker B) and the cash flow for the stock leg trade had it executed at the original terms to be *$23,500,000* (*i.e.,* 470,000 shares × $50.00 per share = $23,500,000 paid by Floor Broker B to Floor Broker A). Thus, the total aggregate cash flow of the Stock-Option order had it executed at the original terms would have been *$19,000,000* (*i.e.,* the absolute value of the difference between the cash flows for the options leg and the stock leg had they executed at the original terms);

Pursuant to proposed subparagraph (A)(ii), the Participant would have to provide documentation to the Exchange that states that the actual aggregate cash flow for the options leg as actually executed to have been *$4,400,000* (*i.e.,* 10,000 contracts = 1,000,000 underlying shares; 1,000,000 shares × $4.40/share = $4,400,000 to be paid by Floor Broker A to Floor Broker B); and

Pursuant to proposed subparagraph (A)(iii), the Participant would have to submit a Comparable Stock Price (''CSP'') that would result in exactly the same aggregate cash flow as calculated pursuant to proposed subparagraph (A)(i) of *$19,000,000.* Thus, the proposed CSP would be calculated pursuant to the following formula:

$$CSP = \frac{\text{(Proposed Aggregate Cash Flow– Actual Cash Flow of Options Leg)}}{\text{Number of Shares Actually Executed}}$$

Pursuant to this formula, the CSP is *$49.787234* (*i.e.,* $19,000,000–$4,400,000)/470,000 shares).

Moreover, the following Example 9 illustrates how proposed subparagraph (A)(iv) would be applied.

*Example 9.* Assume the same as Example 8, except that Floor Broker A maintains that the Adjusted Stock Price (''ASP'') should be $49.79 by rounding up to the nearest cent and Floor Broker B maintains that the ASP should be $49.78 by rounding down to the nearest cent.[45]

Proposed subparagraph (A)(iv) provides latitude in determining the actual ASP, by allowing the parties to reconcile rounding discrepancies. Thus, pursuant to proposed subparagraph (A)(iv), the permissible range for an ASP would be plus or minus $0.015 from $49.787234, which is $49.772234–$49.802234. Given this permissible range, an equitable remedy for the discrepancy would be for Floor Broker A and Floor Broker B to split the difference in CSPs and meet halfway at $49.785. Since the ASP of $49.785 is within the range of the parameters based on a CSP of $49.78 and $49.79, the agreed ASP of $49.785 may be accepted by the Exchange, so long as the other requirements of proposed Rule 11 are satisfied.[46]

Proposed subparagraph (B) details the necessary calculations for Adjusted Stock Quantity, where a non-stock leg executed at a quantity or was adjusted to a quantity other than the quantity originally agreed upon by all of the parties to the Stock-Option or Stock-Future order. Thereunder, proposed subparagraphs (B)(i)–(iii) require the Participant that submitted the stock leg trade to submit:

(i) the original hedge ratio agreed upon by all the parties to the Stock-Option or Stock-Future order, prior to any component trade having been executed;

(ii) the proposed Expected Stock Quantity (''ESQ'') that maintains the original hedge ratio; and

(iii) the proposed Adjusted Stock Quantity (''ASQ'') that comports with the following formula:

$98.5\% \text{ ESQ} \leq \text{ASQ} \leq 101.5\% \text{ ESQ}$

The following *Example 10* illustrates how the requirements of proposed subparagraph (B) could be met.

*Example 10.* Assume that the current market value for XYZ Jan 50 call options is $4.50/share, the call options have a delta value of 0.47, and the current market value for security XYZ is $50.00. Assume that Floor Broker C, Floor Broker D, and Floor Broker E agree to a Buy-Write Stock-Option combination order and wish to employ a delta-neutral hedge (*i.e.,* hedge ratio of 0.47) against the options position. Specifically, the parties agree that Floor Brokers C and D will buy 10,000 XYZ Jan 50 calls from Floor Broker E for $4.50/share, where Floor Broker C will buy 7,000 contracts and Floor Broker D will buy 3,000 contracts, and Floor Brokers C and D will sell to Floor Brokers E 470,000 shares of XYZ at $50.00/share, where 329,000 shares are sold by Floor Broker C and 141,000 shares are sold by Floor Broker D. Assume that the parties are on the floor of an options exchange and forward the terms of the stock leg order to an interdealer broker, who then forwards the order to a executing broker Participant for execution on the Exchange.

However, assume further that immediately after the parties relayed the terms of the original stock leg trade to the interdealer broker, Floor Broker D pulls out of the Stock-Option order because his customer cancels his order. Notwithstanding, Floor Brokers C and E wish to go forward with the transaction and agree to trade 7,000 contracts of XYZ Jan 50 call options at $4.50/share and hedge with a trade of 329,000 shares of XYZ at $50.00. Assume then that options leg executes at 7,000 contracts and before the adjusted terms to the stock leg quantity reaches the executing broker Participant, the stock leg executes at the original terms of 470,000 shares of XYX at $50.00 per share.

The Participant that submitted the stock leg trade (*i.e.,* the executing broker Participant) now wishes to adjust only the quantity of the stock leg trade to ensure that the hedge ratio remains the same as originally agreed. In addition to meeting the requirements of proposed paragraph (c)(1) and (c)(2), the Participant would have to submit the following documentation and calculations:

Pursuant to proposed subparagraph (B)(i), the Participant that submitted the stock leg trade would have to provide documentation that clearly shows the original hedge ratio agreed upon by all the parties to the Stock-Option order. In this case, the original hedge ratio was *0.47;*

Pursuant to proposed subparagraph (B)(ii), the Participant would have to provide an ESQ that maintains the original hedge ratio. Since the parties originally agreed to execute a delta-neutral hedge, the ESQ would be *329,000 shares* (*i.e.,* 7,000 contracts × 100 shares per contract = 700,000 shares

[45] Given that Floor Broker A is selling the underlying stock and Floor Broker B is buying the underlying stock, it stands to reason that Floor Broker A would prefer to round the CSP to a higher figure and Floor Broker B would prefer to round the CSP to a lower figure.

[46] Although proposed subparagraph (A)(iv) allows for the ASP to be within a permissible range, the actual determination of the ASP is not at random. As shown in Example 9, the ASP that is submitted to the Exchange is not a random number within the permissible range, but rather, the arithmetic mean of two legitimate, yet different values.

equivalent × 0.47 hedge ratio = ESQ of 329,000 shares); and

Pursuant to proposed paragraph (B)(iii), the Participant would have to submit an ASQ that is within the range 98.5% of the ESQ and 101.5% of the ESQ of 329,000. In this Example, the parties to the trade would likely agree that the CSQ should be the ASQ, since the adjustment to the quantity of a stock leg trade resulted in an exact Round Lot value.[47] Thus, the parties would likely agree to an ASQ of 329,000, which falls within the permissible range. Thus, the Exchange may accept the proposed quantity adjustment, so long as the other requirements of proposed Rule 11 are satisfied.

Proposed subparagraph (C) details the necessary calculations for Adjusted Stock Quantity for a Stock-Option order only, where an options leg trade executed at a price or was adjusted to a price other than the price originally agreed upon by all of the parties to the Stock-Option order and the parties wish to maintain the original delta-based hedge ratio. Thereunder, proposed subparagraphs (C)(i)–(iii) require the Participant that submitted the stock leg trade to submit:

(i) the delta used to calculate the size of the original stock leg trade (''Δ1'');

(ii) the proposed delta associated with the ASP (''Δ2'');

(iii) the proposed ESQ based on the following formula:

ESQ = (Original Stock Leg Quantity × Δ2)/Δ1

(iv) the proposed ASQ that comports with the following formula:

98.5% ESQ ≤ ASQ ≤ 101.5% ESQ

This adjustment calculation contemplates situations where a change in the delta value of the options leg would necessitate an adjustment to the quantity of the stock leg trade to maintain the delta-based hedge. If the original hedge ratio was delta-based, this calculation would permit an adjustment to the stock leg trade to maintain the original delta-based hedge ratio.[48] The following *Examples 11 and 12* illustrate how the requirements of proposed subparagraph (C) could be met.

*Example 11.* Assume the same as Example 8, except that the Participant that submitted the stock leg trade wished to adjust the *quantity* of the stock leg trade to maintain the original delta-neutral hedge, as opposed to adjusting the price of the stock leg trade to maintain the original aggregate cash flow. Assume that when the options leg executed at $4.40 per share, the corresponding delta value dropped from 0.47 to 0.45.[49] In order to adjust the quantity of the stock leg trade to comport with the correct delta to maintain a delta-neutral hedge, the Participant would have to submit the following information to the Exchange:

Pursuant to proposed subparagraph (C)(i), the Participant would have to provide documentation evincing the delta value of the options contract at $4.50/share was *0.47;*

Pursuant to proposed subparagraph (C)(ii), the Participant would have to provide documentation evincing the delta value of the options contract at $4.40/share to be approximately *0.45;*[50]

Pursuant to proposed subparagraph (C)(iii), the Participant would have to provide an ESQ that is the quotient of the product of the original stock leg quantity and the new delta and the original delta. In this case, the calculation would be (470,000 original shares × 0.45 new hedge ratio)/0.47 original hedge ratio = CSQ of 450,000 shares; and

Pursuant to proposed paragraph (C)(iv), the Participant would have to submit an ASQ that is within the range 98.5% of the CSQ and 101.5% of the ESQ, which in this Example would be 443,250 to 456,750. As noted above, the proposed adjusted delta is approximately 0.45.[51] It is possible that the parties may utilize slightly different delta values, depending on the reasonable option pricing model employed and the rounding methodology used.[52] If the respective delta values differ, then the CSQ would certainly be different. Thus, allowing the parties a *de minimis* range to reconcile such model and rounding inconsistencies would facilitate an agreement as to the ASQ. However, if the parties agree that the adjusted delta value should be exactly 0.45, then the CSQ would equal the ASQ at 450,000 shares.

*Example 12.* Assume the same as Example 8, except that parties to the Stock-Option trade wished to employ a *delta-based* hedge ratio where the stock leg trade represented 10% more stock than required for a delta-neutral hedge. Thus, the parties agreed that Floor Broker A would buy 10,000 XYZ Jan 50 calls from Floor Broker B for $4.50 per share and Floor Broker A would sell to Floor Broker B 517,000 shares of XYZ at $50.00/share, which is 10% more shares of XYZ than needed to effect a delta-neutral hedge where the delta value is 0.47. However, assume that market conditions in the options market resulted in the options leg executing at $4.40 per share with a corresponding delta value of 0.45. In order to adjust the quantity of the stock leg trade to maintain the original delta-based hedge ratio, the Participant that submitted the stock leg trade would have to submit the following information to the Exchange:

Pursuant to proposed subparagraph (C)(i), the Participant would have to provide documentation evincing the delta value of the options contract at $4.50/share was *0.47;*

Pursuant to proposed subparagraph (C)(ii), the Participant would have to provide documentation evincing the delta value of the options contract at $4.40/share to be approximately 0.45;

Pursuant to proposed subparagraph (C)(iii), the Participant would have to provide an ESQ that is the quotient of the product of the original stock leg quantity and the new delta and the original delta. In this case, the calculation would be (517,000 original shares × 0.45 new hedge ratio)/0.47 original hedge ratio = CSQ of 495,000 shares. As originally intended, 495,000 shares represents 10% more shares than required to create a delta-neutral hedge; and

Pursuant to proposed paragraph (C)(iv), the Participant would have to submit an ASQ that is within the range 98.5% of the CSQ and 101.5% of the ESQ, which in this Example would be 487,575 to 502,425. As discussed in Example 11, above, this *de minimis* range is necessary to address the possibility that the parties may utilize slightly different delta values, depending on the reasonable option pricing model employed and the rounding methodology used. However, if the parties agree that the adjusted

[47] If the ESQ were of a Mixed Lot quantity, the parties to the trade may wish to avoid a Mixed Lot stock trade, as such a trade can ultimately result in Odd Lot remainders. Thus, under those circumstances, the parties may agree to round the stock transaction down to the nearest Round Lot. It is important to note that the parties could not round up because that would result in the stock leg trade from not being adequately hedged by options contracts that represent at least the same number of shares as the stock leg, as required by the proposed definition of ''Stock-Option'' orders.

[48] The Exchange notes that it will only permit the parties to a Stock-Option trade to adjust either the quantity or price of the stock leg trade, pursuant to proposed paragraph (c)(3), based on the options leg executing at or being adjusted to a price other than the price originally agreed upon by all of the parties to the Stock-Option trade.

[49] Depending on how values are rounded, the delta of an option may be more than two digits.

[50] *Id.*

[51] *Id.*

[52] Unlike the ASP calculation where the original and adjusted prices are known based on the objective pricing information immediately discernible by the Exchange, when a price adjustment is made, the corresponding delta adjustment cannot be immediately discerned by the Exchange. Therefore, the Exchange submits that adopting a rule-based range of acceptable delta values is the most reasonable approach.

delta value should be exactly 0.45, then the CSQ would equal the ASQ at 495,000 shares.

Once the ASQ or ASP has been presented to the Exchange pursuant to proposed paragraph (c)(3), pursuant to proposed paragraph (c)(4), the Exchange would ascertain that the proposed adjusted stock leg trade could have been executed in the Matching System at the time the trade was initially executed, in compliance with all applicable CHX and SEC rules. The proposed paragraph further provides that, if the trade adjustment is approved, the adjustment shall be accepted, recorded, and submitted to a Qualified Clearly Agency, without regard to orders residing in the Matching System at the time the adjustment is made. Proposed paragraph (c)(4) mirrors proposed Rule 9(c), which deals with the validation of adjustments for trades based on Bona Fide Error.

Specifically, proposed paragraph (d)(4) is designed to reasonably ensure that a proposed adjusted trade would not have, *inter alia,* traded-through the CHX Book or a Protected Quotation of an external market in violation of Rule 611(a) of Regulation NMS. This validation illustrates the potential benefits of a stock leg trade adjustment, which is to preserve the timestamp of the original stock leg trade. Specifically, a trade adjustment would prevent the need to cancel the trade and resubmit a corrective trade and thereby prevent the possibility that the CHX Book would block the new stock leg trade from being executed, due to a better priced order, which was submitted after the trade cancellation, now resting on the CHX Book. Similarly, with respect to the NBBO, a trade adjustment would prevent the possibility that the NBBO would end up blocking the new stock leg trade from being executed.

Moreover, as discussed above, since many Stock-Option orders are submitted as QCTs, the timing of the execution of the different components is of paramount importance.[53] Therefore, the cancellation of a stock leg trade that is out-of-hedge and resubmission of a new corrective trade would rarely, if ever, meet QCT time requirement and would consequently require all components of the Stock-Option order to be cancelled and re-attempted. That is, a resubmitted stock leg trade could not be marked QCT, unless all of the components, including a good non-stock leg trade, were cancelled and re-executed. Therefore, trade adjustments have the added benefit of allowing market participants the ability to execute multi-component orders more efficiently.

Proposed paragraph (e) mirrors proposed Rule 9(d) and provides that if the Exchange approves a request for a stock leg trade cancellation or adjustment, any corrective action(s) necessary to effectuate the cancellation or adjustment, including, but not limited to, corrective entries into the Exchange's records and/or corrective clearing submissions to a Qualified Clearing Agency, shall be taken by Exchange operations personnel only. The purpose of this language is to clarify that the Participant's only role in the proposed trade adjustment or cancellation is to provide to the Exchange the required information and documentation as detailed under proposed Rule 11. Finally, proposed paragraph (f) mirrors proposed Rule 9(e) and provides that failure to comply with the provisions of this Rule shall be considered conduct inconsistent with just and equitable principles of trade and a violation of Article 9, Rule 2.

*Implementation of Proposed Rules*

Prior to implementing proposed Article 20, Rules 9, 9A, and 11, the Exchange will ensure that policies and procedures are in place to allow Exchange operations personnel to effectively monitor and surveil the use of the proposed cancellations, adjustments, and submission of ECTs. The Exchange notes that detailed policies and procedures are already in place and are being followed by Exchange operations personnel for all proposed Rules that merely clarify and detail existing functionality offered by the Exchange. To the extent that the proposed Rules allow for new functionality, existing policies and procedures will be expanded and refined to cover such new functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[54] and furthers the objectives of Section 6(b)(5) in particular,[55] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

Specifically, the proposed rules to permit the adjustment of Bona Fide Error trades furthers the objectives of the Act by allowing persons engaged in facilitating transactions in securities to remedy Bona Fide Errors without having to cancel the erroneous trade. This will, in turn, perfect the mechanisms of a free and open market by promoting efficient execution of trades and prevent the excessive reporting of activity to the Consolidated Tape.[56]

Moreover, the proposed rule change to expand situations where a Stock-Option or Stock-Future stock leg trade may be cancelled and to permit the adjustment of stock leg trades furthers the objectives of the Act by providing Participants the ability to better adapt to changes in the equities and derivatives markets. Specifically, the proposed rule change will allow Participants to adapt to changes to the options or futures leg and therefore facilitate the execution of Stock-Option or Stock-Future combination orders in ratios as originally agreed by the parties to the order.

In addition, the proposed rule change to permit the adjustment of the stock leg trade furthers the objectives of the Act by protecting investors and the public interest. From a cost standpoint, by allowing an adjustment to a stock leg trade, as opposed to outright cancellation and resubmission of a new order, Participants should realize cost-savings via reduced order cancellation fees.[57] The reduced fees will in turn protect investors by making the marketplace more accessible. Also, since the adjustment of a trade pursuant to the proposed rule changes eliminates the need for the parties to execute and report a replacement trade, the proposed rule should bolster the integrity and accuracy of the publicly disseminated trade reporting information, by removing duplicative trade reports. In addition, since the adjustment would only impact the parties to the options or futures transaction, the proposed amendments would not impact other Participants that submit orders on the Exchange. Finally, permitting the adjustment of the stock leg when the non-stock leg trade has been adjusted should reduce the credit risk to the parties involved in the transaction, by allowing such parties to adjust the stock leg to properly hedge the corresponding options or futures position and, therefore, prevent unwanted and/or unsustainable stock positions.

[53] *See supra* note 31.

[54] 15 U.S.C. 78f(b).

[55] 15 U.S.C. 78f(b)(5).

[56] *See supra* note 21.

[57] Section E.8 of the Exchange's Fee Schedule details a formula-based Order Cancellation Fee, which assess a daily cancellation fee per Account Symbol, if the order cancellation ratio exceeds a designated threshold.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will incentivize market participants to utilize the services offered by the Exchange by affording customers better opportunities to execute complex combination orders. By doing so, the Exchange is promoting competition among the trading centers, which will promote the public interest.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2013–16 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–CHX–2013–16. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of CHX. 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–CHX–2013–16, and should be submitted on or before October 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–22648 Filed 9–17–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[License No. 07/07–0116]**

### Eagle Fund III, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Eagle Fund III, L.P., 101 S. Hanley Road, Suite 1250, St. Louis, Missouri 63105, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and 13 CFR 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') Rules and Regulations. Eagle Fund III, L.P., provided debt and equity financing to Net Direct Merchants LLC (''Net Direct''), 217 North Seminary Street, Florence, AL, 35630. The financing was contemplated to provide capital that contributes to the growth and overall sound financing of Net Direct.

The financing is brought within the purview of § 107.730(a)(1) because Eagle Fund II, L.P., an Associate of Eagle Fund III, L.P. as defined in § 107.50, owns a ten percent or greater equity interest in Net Direct. Accordingly, Net Direct is considered an Associate of Eagle Fund III, L.P.

Notice is hereby given that any interested person may submit written comments on the transaction to the Acting Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

**Pravina Raghavan,**

*Acting Associate Administrator for Investment and Innovation.*

[FR Doc. 2013–22415 Filed 9–17–13; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

**[License No. 07/07–0117]**

### Eagle Fund III–A, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Eagle Fund III–A, L.P., 101 S. Hanley Road, Suite 1250, St. Louis, Missouri 63105, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and 13 CFR 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') Rules and Regulations. Eagle Fund III–A, L.P., provided debt and equity financing to Net Direct Merchants LLC, (''Net Direct''), 217 North Seminary Street, Florence, AL 35630. The financing was contemplated to provide capital that contributes to the growth and overall sound financing of Net Direct.

The financing is brought within the purview of § 107.730(a)(1) because Eagle Fund II, L.P., an Associate of Eagle Fund III–A, L.P. as defined in § 107.50, owns a ten percent or greater equity interest in Net Direct. Accordingly, Net Direct is considered an Associate of Eagle Fund III–A, L.P.

Notice is hereby given that any interested person may submit written comments on the transaction to the Acting Associate Administrator for Investment and Innovation, U.S. Small

[58] 17 CFR 200.30–3(a)(12).

Business Administration, 409 Third Street SW., Washington, DC 20416.

**Pravina Raghavan,**

*Acting Associate Administrator for Investment and Innovation.*

[FR Doc. 2013–22411 Filed 9–17–13; 8:45 am]

**BILLING CODE P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2012–0026]**

### Charging Standard Administrative Fees for Nonprogram-Related Information

**AGENCY:** Social Security Administration.

**ACTION:** Notice of standard administrative fees for providing information and related services for nonprogram-related purposes; announcing addition to schedule of standardized administrative fees.

**SUMMARY:** On August 22, 2012,[1] we announced in the **Federal Register** a schedule of standardized administrative fees we charge to recover the full cost of providing information and related services we provide to the public for nonprogram purposes. We are announcing the addition of a new standard fee to the previously published schedule of standardized administrative fees.

This new standard fee is part of our continuing effort to standardize fees for nonprogram information requests. Standard fees ensure consistency and that we recover the full cost of supplying information when a request is for a purpose not directly related to the administration of a program under the Social Security Act (Act).

**SUPPLEMENTARY INFORMATION:** Section 1106 of the Act and the Privacy Act[2] authorize the Commissioner of Social Security to promulgate regulations regarding agency records and information and to charge fees for providing information and related services. Our regulations and operating instructions identify when we will charge fees for information.[3] Under our regulations, whenever we determine a request for information is for any purpose not directly related to the administration of the Social Security programs, we require the requester to pay the full cost of providing the information.

Currently, requesters complete Form SSA–7050, *Request for Social Security Earnings Information,* to initiate requests for detailed and certified yearly Social Security earnings information. We determine the fee for this information based on the number of years requested. The form includes a fee chart to guide requesters in determining the amount of the fee. The requesters calculate their fee and include payment with the form. The existing process has created inconsistencies and inefficiencies. The form's existing fee schedule does not conform to the standard fee methodology published in the **Federal Register** on August 22, 2012. Moreover, the fee schedule is outdated and incongruent with the agency's current costs for this service.

*New Information:* We are establishing a new standard, single-tier fee of $102 for each request of certified yearly totals of Social Security earnings, regardless of the number of earnings years requested. We based this new standard fee on our most recent cost calculations for supplying this information and the standard fee methodology previously published in the **Federal Register**. Non-certified, yearly earnings totals (Form SSA–7004, *Request for a Social Security Statement*) are still available as a free online service through mySocialSecurity, *http://socialsecurity.gov/myaccount/,* a personal online account for Social Security information and services. Social Security Statements display uncertified, yearly earnings and do not show any employer information.

We will evaluate all standard fees at least every two years to ensure we continue to capture the full costs associated with providing information for nonprogram-related purposes. We will require advance payment of the standard fee by check, money order, or credit card. We will not accept cash. If we revise any of the standard fees, we will publish another notice in the **Federal Register**. For other nonprogram-related requests for information not addressed here or within the current schedule of standardized administrative fees, we will continue to charge fees calculated on a case-by-case basis to recover our full cost of supplying the information. No other changes will apply to the schedule of standardized administrative fees announced in the **Federal Register**[1] on August 22, 2012. We will implement the new fee across all of our field offices simultaneously.

### Additional Information

Additional information is available on our Web site at *http://socialsecurity.gov/pgm/business.htm* or by written request to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

**DATES:** The standard administrative fee will apply to nonprogram-related requests for information we receive on or after September 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kristina Poist, Social Security Administration, Office of Finance, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1977. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://socialsecurity.gov.*

Dated: September 12, 2013.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

[FR Doc. 2013–22625 Filed 9–17–13; 8:45 am]

**BILLING CODE 4191–02–P**

[1] 77 FR 50757, Aug. 22, 2012.

[2] 42 U.S.C. 1306 and 5 U.S.C. 552a, respectively.

[3] See 20 CFR 402.170, 402.175; Program Operations Manual System (POMS) GN 03311.005.

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Fiscal Year 2014 WTO Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-Containing Products

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice of country-by-country allocations of the Fiscal Year (FY) 2014 (Oct. 1, 2013, through Sept. 30, 2014) in-quota quantity of the tariff-rate quotas (TRQs) for imported raw cane sugar, refined sugar (syrups and molasses), specialty sugar, and sugar-containing products.

**DATES:** Effective October 1, 2013.

**ADDRESSES:** Inquiries may be mailed or delivered to Ann Heilman-Dahl, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Vincent Parascandolo, Office of Agricultural Affairs, telephone: 202–395–9582 or facsimile: 202–395–4579.

**SUPPLEMENTARY INFORMATION:** Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains TRQs for imports of raw cane sugar and refined sugar (syrups and molasses). Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the World Trade Organization (WTO) Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative in Presidential Proclamation 6763 (60 FR 1007).

On September 13, 2013, the Secretary of Agriculture (Secretary) announced the sugar program provisions for fiscal year (FY) 2014 (Oct. 1, 2013, through Sept. 30, 2014). The Secretary announced an in-quota quantity of the TRQ for raw cane sugar for FY 2014 of 1,117,195 metric tons * raw value (MTRV), which is the minimum amount to which the United States is committed to provide access for under the WTO Uruguay Round Agreements. USTR is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

| Country | FY 2014 Raw cane sugar allocations (MTRV) |
|---|---|
| Argentina | 45,281 |
| Australia | 87,402 |
| Barbados | 7,371 |
| Belize | 11,584 |
| Bolivia | 8,424 |
| Brazil | 152,691 |
| Colombia | 25,273 |
| Congo | 7,258 |
| Costa Rica | 15,796 |
| Cote d'Ivoire | 7,258 |
| Dominican Republic | 185,335 |
| Ecuador | 11,584 |
| El Salvador | 27,379 |
| Fiji | 9,477 |
| Gabon | 7,258 |
| Guatemala | 50,546 |
| Guyana | 12,636 |
| Haiti | 7,258 |
| Honduras | 10,530 |
| India | 8,424 |
| Jamaica | 11,584 |
| Madagascar | 7,258 |
| Malawi | 10,530 |
| Mauritius | 12,636 |
| Mexico | 7,258 |
| Mozambique | 13,690 |
| Nicaragua | 22,114 |
| Panama | 30,538 |
| Papua New Guinea | 7,258 |
| Paraguay | 7,258 |
| Peru | 43,175 |
| Philippines | 142,160 |
| South Africa | 24,220 |
| St. Kitts & Nevis | 7,258 |
| Swaziland | 16,849 |
| Taiwan | 12,636 |
| Thailand | 14,743 |
| Trinidad & Tobago | 7,371 |
| Uruguay | 7,258 |
| Zimbabwe | 12,636 |

These allocations are based on each country's historical shipments to the United States. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin, and certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

On September 13, 2013, the Secretary announced the establishment of the in-quota quantity of the FY 2014 refined-sugar TRQ at 122,000 MTRV for which the sucrose content, by weight in the dry state, must have a polarimeter reading of 99.5 degrees or more. The total of 122,000 MTRV includes the minimum level necessary to comply with the US WTO Uruguay Round commitments—22,000 MTRV, of which 1,656 MTRV is reserved for specialty sugars—and an additional 100,000 MTRV for specialty sugars. USTR is allocating 12,050 MTRV of refined sugar to Canada and 8,294 MTRV of refined sugar to be administered on a first-come, first-served basis.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. The Secretary has announced that the total in-quota quantity of specialty sugar will be the 1,656 MTRV included under the U.S. WTO commitment plus an additional 100,000 MTRV. The first tranche of 1,656 MTRV will open October 10, 2013. All types of specialty sugars are eligible for entry under this tranche. The second tranche of 37,000 MTRV will open on October 24, 2013. The third, fourth, and fifth tranches of 21,000 MTRV each will open on January 10, 2014; April 10, 2014; and July 10, 2014, respectively. The second, third, fourth and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons (MT) of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to Chapter 17 of the HTS, USTR is allocating 59,250 MT to Canada. The remaining 5,459 MT of the in-quota quantity is available to other countries on a first-come, first-served basis.

Raw cane sugar, refined and specialty sugar and sugar-containing products for FY 2014 TRQs may enter the United States as of October 1, 2013.

**Michael Froman,**

*United States Trade Representative.*

[FR Doc. 2013–22641 Filed 9–17–13; 8:45 am]

**BILLING CODE 3290–F3–P**

* Conversion factor: 1 metric ton = 1.10231125 short tons.

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending September 7, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT- OST–2007–28567.

*Date Filed:* September 3, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 24, 2013.

*Description:* Application of American Airlines, Inc. requesting renewal of segment 2 of its certificate of public convenience and necessity for Route 826, authorizing scheduled foreign air transportation of persons, property, and mail between Chicago, Illinois and Beijing, China.

**Barbara J. Hairston,**

*Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.*

[FR Doc. 2013–22707 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Environmental Impact Statement for the ACE*forward* Program From Merced, Modesto and Stockton to San Jose, California

**AGENCY:** Federal Railroad Administration (FRA) U.S. Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** FRA is issuing this notice to advise other agencies and the public that FRA and the San Joaquin Regional Rail Commission (SJRRC) will jointly prepare an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the Altamont Corridor Express (ACE) program also known as the ACE*forward* Program in compliance with the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA).

The EIS will analyze potential impacts of the proposed action of improving and expanding existing corridor rail service between Stockton and San Jose, California and extending new rail service to Modesto and Merced, California. FRA has responsibility for overseeing the safety of railroad operations and may need to take certain regulatory action prior to operation of the new or expanded service. FRA is authorized to provide Federal funding for intercity passenger rail capital investments and may provide financial assistance for the program, including grant funding. FRA will serve as the federal lead agency for the preparation of the EIS. SJRRC will serve as the state lead agency for the preparation of the EIR. The Federal Transit Administration (FTA) has responsibility for providing Federal funding for intra-city commuter rail capital investments and has funded improvements in this corridor in the past, including intermodal stations and park-and-ride lots. Since FTA maintains an interest in transportation improvements in the corridor, it will be a cooperating agency in accordance with 40 CFR 1501.6.

FRA is publishing this notice to solicit public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by the FRA, SJRRC and their representatives will be considered in the preparation of the EIR/EIS.

**DATES:** Public scoping meetings were advertised locally and held in Santa Clara, Fremont, Modesto, Livermore, and Tracy, California from July 22 to July 30, 2013. The program's purpose and need and the description of alternatives under consideration for the proposed action were presented at these meetings. Scoping materials and information concerning the scoping meetings is available through the SJRRC's Internet site: *http://www.acerail.com/About/Public-Projects/ACEforward.*

**ADDRESSES:** Written comments on the scope of the ACE*forward* Program EIR/EIS, including the program's purpose and need, the alternatives to be considered, the impacts to be evaluated and the methodologies to be used in the evaluations, should be provided to the FRA and/or SJRRC within thirty (30) days of the publication of this notice. Written comments may be sent to Mr. Dan Leavitt, Manager of Regional Initiatives, ATTN: ACE*forward* Program EIR/EIS, 949 East Channel Street, Stockton, CA 95202, or via email with the Subject Line ''ACE*forward* Program EIR/EIS'' to: *aceforward@acerail.com.* Comments may also be sent to Ms. Stephanie Perez, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–0388.

**SUPPLEMENTARY INFORMATION:**

#### Past Planning Efforts

SJRRC and the California High Speed Rail Authority (CHSRA) conducted planning for the Altamont Corridor Rail Project (ACRP) from 2009 to 2012 to develop a dedicated regional rail corridor from Stockton and Modesto to San Jose through the Altamont Pass. This planning for commuter and intercity passenger rail service to accommodate electric powered passenger trains. The ACRP would service regional transportation needs and would provide an opportunity to link to the planned California High Speed Train (HST) system.

The ultimate-build concept of the ACRP included a grade-separated, independently-owned right of way for electrified service from Stockton to San Jose. While the ultimate-build concept of the ACRP remains a long-term potential, SJRRC has identified shorter term goals to modernize the existing ACE service that would provide faster intercity and commuter train service and a connector link between Stockton, Merced, and San Jose as early as within the next 10 years. The ACE*forward* Program includes a new suite of improvements developed by SJRRC to deliver those present goals. The EIR/EIS will address the ACE*forward* Program. If the ultimate-build concept is to be implemented in the future, it would be the subject of a separate environmental review process.

As of June 2013, the SJRRC is now advancing the ACE*forward* Program. ACE*forward* is consistent with the Metropolitan Transportation Commission *Bay Area Regional Rail Plan,* which identified the Altamont Corridor as a key future northern California regional rail route. ACE*forward* will build upon the *Bay Area Regional Rail Plan* and the prior planning for the ACRP. ACE*forward* is also consistent with the CHSRA 2012 Business Plan in relation to providing an opportunity to connect existing intercity and commuter rail services to future HST service.

#### Purpose and Need of the Proposed Program

The purpose of the ACE*forward* Program is to implement a suite of improvements to reduce travel time, increase service reliability and flexibility, improve passenger facilities and extend the ACE rail system to downtown Modesto and downtown Merced.

The need for the ACE*forward* Program is to enhance intercity rail services in the northern San Joaquin Valley of the ACE corridor connecting the Southern Bay area with the Tri-Valley and the San Joaquin Valley. This need stems from the social and economic ties and travel demand that bind together the Northern San Joaquin Valley, the Tri-Valley and the Southern Bay area, as well as high levels of existing and anticipated growth, travel demand, and congestion that will likely cause environmental degradation and higher safety risks, if not addressed. This need cannot be met by the existing ACE service or infrastructure, which has significant operating limitations, such as limited capacity single track for much of the route, slow average operating speeds, service limitations, and lack of existing service to Modesto and Merced.

An expanded and improved ACE would provide an alternative to automobile transportation that would help lower greenhouse gas emissions, improve air quality, and further regional land use and transportation planning goals under Senate Bill (SB) 375 and other local, regional, and state sustainability initiatives. In addition to the environmental and mobility benefits of expanded intercity rail service with downtown stations, an improved ACE would provide a catalyst for smart growth in communities by revitalizing city core areas and addressing traffic

congestion issues in the cities of the northern Central Valley. The extensions to Modesto and Merced, while servicing existing intercity transportation needs, will also provide future opportunities to link to the expanding HST system.

SJRRC, along with other rail providers, has partnered with the Union Pacific Railroad Company (UPRR) in a Memorandum of Understanding (MOU) to identify improvements needed to increase ACE service, which are included in the ACE*forward* Program. UPRR has agreed to validate previously identified improvements associated with the near-term increase of daily round-trips as well as study additional improvements that may be required to support further service expansion.

**Proposed Program**

ACE*forward* is a phased improvement program to reduce travel time and improve service reliability and passenger facilities along the existing Stockton to San Jose corridor, and to extend ACE rail service to Modesto and to Merced. This program would provide the foundation for the long term plan for SJRRC intercity passenger rail services.

The program would improve the existing ACE service managed by SJRRC by delivering safety and operational improvements that enable expansion of service to six daily round trips between Stockton and San Jose and extending ACE service to Modesto, which could occur as early as 2018. Following that, the program would extend ACE service to Merced and service frequency from Stockton to San Jose would increase to 10 or more daily round trips, perhaps as soon as 2022.

The ACE*forward* EIR/EIS will include development of preliminary engineering designs and assessment of environmental effects associated with the construction, operation, and maintenance of rail improvements, including new track corridors, additional track, track realignments, ancillary facilities, new stations, and station improvements along the Altamont Corridor.

The FRA and SJRRC will use a tiered process for the environmental review, as provided for in 40 CFR 1508.28 and in accordance with FRA Guidance. Tiering is a staged environmental review process. Tier-1 (or programmatic) analysis comprehensively reviews the environmental, impacts of a program of improvements at a broad conceptual level of analysis including cumulative impacts. Tier-2 (or project) analysis is conducted for specific improvements that are sufficiently designed to allow for a detailed analysis of site-specific compenent projects and alternatives and identification and disclosure of related environmental impacts. Improvements analyzed at a Tier-1 level of review would subsequently be reviewed at a Tier-2 level before they can be approved and constructed at a project level. The EIS/EIR for ACE*forward* will include both a Tier-1 and Tier-2 analysis as discussed below.

**Programmatic (Tier-1) Analysis**

The analysis will describe impacts at a conceptual level of detail focused on the selection of corridors for new service and general environmental impacts associated with that selection. The EIR/EIS will programmatically analyze the following:

- Stockton to San Jose Improvements
  - Increase of service to 10 trains or more in the future, including corridor improvements necessary to support such increases. This will include analysis of potential pinch points identified by UPRR in Niles Canyon, between Newark and Alviso, and between Santa Clara and San Jose.
  - Potential shift in service to a new passenger route along UPRR through downtown Tracy. This improvement would allow for a downtown Tracy station with improved transit connections and close to urban infill/mixed use development in the City.
  - Potential new stations at River Islands in Lathrop and downtown Tracy. A new station in Lathrop would allow for increased ridership potential. Relocation of the Tracy station would allow the benefits noted above.
  - Potential improved connection to Bay Area Rapid Transit (BART) service in the Tri-Valley area that would increase connectivity.
- New extension to Merced
  - Expansion of service to Merced using existing UPRR track, new track built within the UPRR right-of-way, new track outside the UPRR right-of-way, or some combination thereof.
  - Up to 10 or more daily round trip trains and new downtown stations in Turlock and Merced. Additional connections and stations would increase ridership and allow greater opportunities for alternatives to vehicle travel for San Joaquin Valley residents.
- The programmatic analysis will also address all project elements included in the project level or Tier-2 Analysis as described below.

**Project Level (Tier-2) Analysis**

Component projects identified for Tier-2 analysis will also be included in the evaluation at the Tier-1 level. The EIR/EIS will assess the environmental effects of at least the following near-term improvements at a project level of detail:

- Service expansion to Modesto by as early as 2018:
  - Service would be expanded using existing UPRR track, new track built within the UPRR ROW, new track outside the UPRR ROW, or some combination thereof.
  - Potential new crossing of the Stanislaus River
  - Up to six daily round trips
  - New stations at downtown Manteca and downtown Modesto
- Improvements necessary to increase service between Stockton and San Jose to 6 daily round trips by as early as 2018, including the following:
  - Upgrade of the track and structures along the former Southern Pacific line through Niles Canyon to accommodate freight traffic
  - New connections to the former Southern Pacific line at Niles Junction and at Hearst
  - Upgrading of sidings (''Radum'' siding in Livermore/Pleasanton and Altamont and Midway sidings in the Altamont Hills; ''Wyche'' siding in Lathrop/Manteca).
  - New connection between the Oakland subdivision and the Fresno subdivision in Lathrop/Manteca area

The EIR/EIS may also analyze the following operational and safety improvements at the project level:

- Grade-crossing improvements at existing at-grade crossings (four quadrant gates, signals, etc.)
- Grade-separations at several high-priority locations between Stockton and San Jose
- Improvements within the existing right of way at Niles Junction in Fremont/Union City and at the Hearst siding in Pleasanton
- Addition of a parking structure at the Pleasanton Station

**Alternatives**

The EIR/EIS will consider a range of reasonable and feasible alternatives that meet the purpose and need. The EIR/EIS will also consider a No Action or No Project alternative as required under NEPA and CEQA. FRA and SJRRC will consider scoping comments and potential environmental impacts in determining the reasonable alternatives to be considered in the EIR/EIS. Conceptual alternatives for meeting the purpose and need are described below.

**No Action Alternative**

The No Action (No Project or No Build) alternative serves as the baseline for assessment of alternatives. The No Action alternative represents the region's transportation system (highway,

air, and conventional rail) as it exists at the time of the EIR/EIS preparation, and as it would exist in the future without completion of the improvements included in the program description. The No Action alternative defines the existing and future intercity transportation system for the Altamont Corridor and Northern San Joaquin Valley based on programmed and funded improvements to the intercity transportation system, according to the following sources of information: The State Transportation Improvement Program, Regional Transportation Plans for all modes of travel, airport plans, and intercity passenger rail plans.

**Independent Right of Way Alternative**

Independent right of way adjacent to the UPRR right of way that would seek to maximize the provision of a separate right of way for future ACE service will be considered in specific locations including between Manteca and Merced, and possibly over the Altamont Pass. This alternative would reduce the potential for scheduling and other constraints from operating on shared tracks with freight operations.

**Shared Corridor Alternative**

A second alternative that may be considered would be provision of a dedicated passenger track within the existing railroad right-of-way. Such a track could be utilized by passenger trains or by freight trains, but would be developed primarily for passenger traffic use.

**Other Potential Alternatives**

Other alternatives that could be considered could vary proposed program elements. Such variations could include: (1) Other station locations as they arise through the project scoping process; (2) continued use of the existing route to the south of Tracy instead of a downtown alignment; (3) track variations, such as an elevated or sub-grade track instead of an at-grade section; and (4) other variations in alignment, track improvements, service levels, and stations.

**The EIS Process and the Role of Participating Agencies and the Public**

The purpose of the EIR/EIS process is to assess the potentially significant effects of implementing the proposed action on the physical, human, and natural environment. Areas of investigation will be developed during the scoping process and may include, but not be limited to, transportation impacts; safety and security; land use and zoning; indirect and cumulative impacts; land acquisition, displacements, and relocations; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; community disruption and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including endangered species and temporary construction impacts.

FRA will comply with all applicable Federal environmental laws, regulations and executive orders during the environmental review process. These requirements include, but are not limited to, the regulations of the CEQ implementing NEPA (40 CFR parts 1500–1508), State CEQA Guidelines (14 California Code of Regulations 15168(b)), and FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999), project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93(b)), Section 404(b)(1) guidelines of EPA (40 CFR part 230), Executive Orders 11988, 11990 and 12898 regarding floodplains, wetlands, and environmental justice, respectively, Section 106 of the National Historic Preservation Act (36 CFR part 800), Section 7 of the Endangered Species Act (50 CFR part 402), and Section 4(f) of the Department of Transportation Act (49 U.S.C. 303). Measures to avoid, minimize, and mitigate all adverse impacts will be identified and evaluated.

The FRA and the SJRRC will assess the site characteristics, size, nature, and timing of the improvements to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. The EIR/EIS will identify and evaluate reasonable and feasible alternatives, evaluate the impacts from construction, operation, and maintenance, and identify mitigation measures. Information and documents regarding the ACE*forward* environmental review process will be made available through the SJRRC's Internet site: *http://www.acerail.com/sjrrc/capitalprojects.aspx*.

**Scoping and Comments**

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental document. Comments are invited from all interested agencies, Native American Tribes and the public to ensure the full range of issues related to the proposed action and all reasonable alternatives are addressed and that all significant issues are identified. Public agencies with jurisdiction are requested to advise FRA and SJRRC of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed program. Agencies are requested to advise the FRA if they anticipate taking a major action in connection with the proposed program and if they wish to cooperate in the preparation of the EIR/EIS.

Issued in Washington, DC, on September 13, 2013.

**Renee Cooper,**

*Staff Director, Office of Passenger and Freight Programs.*

[FR Doc. 2013–22598 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice Rescinding a Notice of Intent To Prepare a Programmatic Environmental Impact Statement: High Speed Rail Corridor Las Vegas, Nevada to Anaheim, California

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice rescinding intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Federal Railroad Administration (FRA) is issuing this notice to advise the public that FRA is rescinding the Notice of Intent (NOI) to prepare a programmatic environmental impact statement (PEIS) for the California-Nevada Interstate Maglev Project in cooperation with the project sponsor, the Nevada Department of Transportation. FRA published the original NOI in the **Federal Register** on May 20, 2004. This rescission is due to inactivity of this PEIS process for more than five years.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Perez-Arrieta, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Avenue Southeast, (Mail Stop 20), Washington, DC 20590, telephone (202) 493–0388.

**SUPPLEMENTARY INFORMATION:** During the 1990s and 2000s, the California-Nevada Super Speed Train Commission (CNSSTC), a public agency chartered within the State of Nevada, conducted Federally sponsored studies to examine the feasibility and the environmental impacts of linking the Las Vegas area with various points in the Los Angeles region using a magnetic levitation

technology high-speed ground transportation system. During the late 1990s, FRA was implementing the Maglev Deployment Program (Program) created by Congress in the Transportation Equity Act for the 21st Century (Pub. L. 105–178, June 9, 1998). The purpose of the Program was to demonstrate the feasibility of maglev technology. In addition to a number of feasibility studies, FRA prepared a PEIS addressing the potential for significant environmental impact from the Program that included a Las Vegas-Primm project as one of seven projects analyzed in the PEIS. The notice of availability for the PEIS was published on May 4, 2001.

The Department of Transportation and Related Agencies Appropriations Act, 2003 (Pub. L.108–7), which provides appropriations for the FRA and other agencies, included funds specifically to conduct additional design, engineering and environmental studies concerning the California-Nevada Interstate Maglev Project under the FRA's Next Generation High Speed Rail Technology Demonstration Program. On May 20, 2004, FRA issued a notice of intent to prepare a PEIS for the California-Nevada Interstate Maglev project. FRA intended for this PEIS to draw on environmental analysis already completed, including the Las Vegas-Primm project.

The only activity completed for the PEIS was scoping in 2004. No further work has been completed on the PEIS since that time. Due to a lack of activity for more than five years, FRA is issuing this notice terminating the preparation of the PEIS.

**Renee Cooper,**

*Staff Director, Office of Passenger and Freight Programs.*

[FR Doc. 2013–22600 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice Rescinding a Notice of Intent To Prepare an Environmental Impact Statement for the Altamont Corridor Rail Project From Stockton to San Jose, California

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice rescinding intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Federal Railroad Administration (FRA) is issuing this notice to advise the public that FRA is rescinding the Notice of Intent (NOI) to prepare a programmatic environmental impact statement (EIS) for the Altamont Corridor Rail Project from Stockton to San Jose, California Project in cooperation with the project sponsor, the California High Speed Rail Authority (Authority). FRA published the original NOI in the **Federal Register** on October 29, 2009. This rescission is due to the transfer of the project from the Authority to the San Joaquin Regional Rail Commission (SJRRC) and a change in the project definition and purpose and need. An NOI to prepare an Environmental Impact Statement (EIS) for the revised Altamont Corridor Express also known as the ACE*forward* project is being published concurrently with this notice.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Perez-Arrieta, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Avenue Southeast, (Mail Stop 20), Washington, DC 20590, telephone (202) 493–0388.

**SUPPLEMENTARY INFORMATION:** The Altamont Corridor was studied by the Authority and identified as a candidate route to the Bay Area in the Statewide High Speed Train (HST) System Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS). The Authority and FRA further examined the corridor in the 2008 Bay Area to Central Valley HST EIR/EIS and selected the Pacheco Pass via Gilroy as the route to connect the main line of the HST network in the Central Valley with the Peninsula and San Francisco. The Authority and SJRRC proposed to develop a dedicated regional rail corridor through Altamont Pass and the Tri Valley area capable of supporting intercity and commuter rail passenger services. The project was planned to improve the existing ACE service managed by SJRRC by accommodating more trains per day, reducing travel times, and eliminating freight railroad delays by providing separate passenger tracks. The Altamont Corridor was planned to serve as a feeder to the statewide HST System being planned and developed by the Authority. The project considered connections between the Altamont corridor and the HST mainline between Stockton and Modesto and HST compatible infrastructure that would have allowed trains to run from one rail line to the other in order to accommodate intercity travel between stations along the Altamont Corridor and regional stops on the greater statewide HST System.

Scoping was completed for the EIR/EIS in 2009 and the development of preliminary alternatives in 2010 and 2011. No further work was completed on the EIS. Due to the proposed change in leadership and direction of this project, FRA is issuing this notice terminating the preparation of the Altamont Corridor Rail Project EIS.

Issued in Washington, DC, on September 13, 2013.

**Renee Cooper,**

*Staff Director, Office of Passenger and Freight Programs.*

[FR Doc. 2013–22599 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2012–0066]**

### State Rail Plan Guidance

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Availability of Final State Rail Plan Guidance.

**SUMMARY:** FRA is publishing this notice to announce the availability of final State Rail Plan Guidance. The purpose of FRA's final State Rail Plan Guidance is to describe the processes for the development, submission, and acceptance of State rail plans. State rail plans are documents that are required under Section 303 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Section 303 of PRIIA provides for enhanced State involvement in rail policy, planning, and development efforts, including requiring States to develop FRA-accepted State rail plans in order to be eligible for the capital grants authorized in the Act and available under the High-Speed Intercity Passenger Rail program. This guidance provides an explanation of the process to be followed in developing State rail plans, FRA's process for reviewing and accepting State rail plans, a standardized format, and a list of the minimum content requirements for State rail plans. The State Rail Plan Guidance is available on FRA's Web site at *http://www.fra.dot.gov/Page/P0511.*

**DATES:** The final State Rail Plan Guidance is effective as of the publication of this notice on September 18, 2013.

*Applicability:* Any State rail plan whose development is begun after publication of this notice must adhere to the standardized format and minimum content requirements defined within the guidance in order to be accepted by the FRA.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Kyle Gradinger, Transportation Industry Analyst, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Ave. SE., W38–202, Washington, DC 20590; telephone: (202) 493–6191.

**SUPPLEMENTARY INFORMATION:** Final State Rail Plan Guidance was prepared through a notice and comment process involving publication of draft guidance announced in the August 28, 2012 issue of the **Federal Register**, soliciting public review and comment over the following 90 day period. FRA received 121 individual comments from 55 respondents. Comments were received from a diverse group comprised of eight (8) State departments of transportation, one (1) metropolitan planning organization (MPO), eleven (11) trade organizations, five (5) national stakeholder organizations, one (1) private individual, and one (1) public transportation service provider.

Broad support was offered by commenters for preparing State rail plans as part of a comprehensive, coordinated planning framework within and among States, and for addressing passenger and freight needs in an integrated, coordinated way. Almost unanimous support was offered for integrating, to the extent possible, preparation of State rail plans with the statewide/nonmetropolitan and metropolitan transportation planning programs required under the Federal-aid Highway and Federal Transit titles—23 U.S.C. and Chapter 53 of 49 U.S.C., respectively. Similarly, it is within that expanded transportation planning context of States and metropolitan planning organizations (MPOs) that commenters proposed engagement of an expansive range of stakeholder interests in State rail plan development—spanning industry, government, labor, local communities, and the private sector.

However, concerns were expressed by commenters for several procedural aspects of State rail plan preparation, including data collection and the depth of impact assessment required for the rail infrastructure, facilities, and service improvements contained in State rail plans. Other issues raised by commenters included the importance of involving private rail interests in meaningful ways in State rail plan development, while respecting the proprietary nature of their operational and financial records. These comments are grouped and summarized below by topic with FRA responses.

**Coordination With Statewide/Nonmetropolitan and Metropolitan Transportation Planning**

Several comments were received supporting full coordination of State rail plan development with the statewide/nonmetropolitan and metropolitan transportation planning programs required under 23 U.S.C. and Chapter 53 of 49 U.S.C. Commenters recommended a range of specific planning work activities and planning products that represent the best opportunities for coordination with State rail plan development. Following are the details of comments provided and FRA responses regarding coordination between State rail plan development and the transportation planning processes carried out by States and MPOs.

Several commenters proposed that States prepare State rail plans as part of metropolitan and statewide/nonmetropolitan transportation planning processes in order to eliminate duplication of effort. Particular concern was expressed for not establishing a separate planning process for State rail plans—apart from those existing planning processes. It was proposed that States be able to incorporate visions, plans, and priorities that consider rail as one of many transportation modes, in a single statewide transportation plan, with the State rail plan incorporated within the overall plan or as an addendum. A commenter also requested clarification of the term ''compatible,'' as it was used in the draft guidance to describe the relationship between the State rail plan and planning processes. *Response:* FRA has revised the draft guidance to emphasize the importance of preparing State rail plans within the policy and procedural contexts of the multimodal transportation planning processes conducted by states and MPOs and to integrate the documents as much as possible. In revising the guidance, FRA was careful not to convey the MAP–21 financial constraint requirements associated with highway and transit listings to the rail proposals listed in the State rail plan. Also, to improve clarity, the term ''compatible'' was replaced with language calling for state rail plans to be generally consistent with other planning documents and policies.

A commenter recommended that the guidance stipulate that State rail plans should be prepared in coordination with the new freight planning activities carried out by States in accordance with MAP–21. The commenter proposed that the guidance direct States to describe how their State's long-term vision for rail integrates with the State Freight Plan, as well as the National Freight Policy, the National Freight Strategic Plan, and the National Export Initiative. Another commenter recommended that State rail plans include in depth discussion of the changing freight market. *Response:* FRA agrees that State rail plans should be prepared with full understanding of the current and emerging freight, as well as passenger, markets and has revised the guidance accordingly. Language also has been added to the guidance recommending that States coordinate preparation of State freight plans and State rail plans.

A commenter proposed closer coordination between FRA and FHWA and State highway offices, suggesting that States be required to consider the cross-effects of investment in rail and highway improvements, including consideration of rail when planning future highway investments. Another commenter recommends that the guidance specifically require State rail plans to identify the potential impacts of individual projects, as well as the combined impact of all projects in the State rail plan. Specifically, they recommended that local transit modes be added to the list of ''highway, aviation and maritime modes'' included in the draft guidance. *Response:* FRA added ''local transit'' to the list of modes for which potential impacts of State rail plan implementation should be analyzed and added emphasis about the need to assess potential project impacts on an individual, as well as combined, basis.

A commenter recommended revising the guidance to promote consistency between the performance measures used in preparing State rail plans and those used in the statewide/nonmetropolitan and metropolitan transportation planning process, including use of easy-to-read tables. *Response:* FRA agrees that using consistent performance measures is preferable and has revised the guidance to include reference to using performance measures in coordination with those used in broader transportation planning processes, including promoting consistency with transit asset management plans required under MAP–21.

A commenter recommended changing the 5-year state rail plan update cycle included in the draft guidance to a 4-year cycle, for consistency with the document update cycles prescribed in MAP–21 for planning documents. Another commenter proposed annual updates. *Response:* The 5-year update provision is set forth in PRIIA and cannot be changed. However, FRA agrees that the update cycles of State

rail plans should be aligned, to the extent possible, with other planning documents. Accordingly, the guidance has been revised to encourage States to update State rail plans on a consistent cycle with other planning documents, at least every 5 years.

A commenter suggested that the guidance be revised to allow States the flexibility to align the planning horizons of State rail plans with those used in their other planning and programming documents. *Response:* FRA has revised the guidance to allow States to use longer horizon time periods for the Rail Service and Investment Program as long as it identifies specific projects for the 4-year short-term and 20-year vision components.

A commenter recommended adding a requirement that statewide/nonmetropolitan and metropolitan transportation planning processes consider the rail transportation needs of military and federal facilities where appropriate and where regional transportation has an impact on ''military readiness.'' *Response:* FRA has revised the guidance to require States to identify Strategic Rail Corridor Network (STRACNET) facilities in the State rail plans. In addition, revisions also were made to encourage States to include the rail transportation needs of military and federal facilities in their statewide/nonmetropolitan planning processes, as well as in development of State rail plans, as appropriate.

A commenter recommended that the FRA Regional Manager be included as a non-voting member on MPO policy boards. *Response:* While FRA staff can provide technical assistance to States during State rail plan development and MPOs have broad latitude to include non-voting members from Federal and non-Federal agencies, recommending such action is beyond the scope of PRIIA and this guidance.

A commenter questioned the focus directed to ''megaregions,'' in that the concept does not apply to rural States as they seek to accommodate their product shipment needs, as well as serving as through-movement ''bridge states'' for transporting goods to market. *Response:* FRA has revised the guidance to reference rail service needs within and between mega-regions, as well as to passenger service and freight movement needs in all other appropriate sections of the country.

**Public and Stakeholder Involvement**

Several comments were received that recommended linking public involvement processes during State rail plan development with the statewide/nonmetropolitan and metropolitan transportation planning programs required under 23 U.S.C. and Chapter 53 of 49 U.S.C. Following are the detailed comments provided and FRA responses regarding coordination of public and stakeholder involvement between State rail plan development and the transportation planning processes carried out by States and MPOs.

Commenters recommended that the guidance explicitly require that draft State rail plans be presented for public comment for at least 30 days prior to being submitted to the FRA for acceptance, as well as identify milestones and minimum standards for stakeholder and public involvement that emphasize collaborative partnerships. *Response:* The guidance has been revised to encourage States to conduct stakeholder involvement in full coordination with, or incorporated within, the public involvement activities conducted by States and MPOs in their respective transportation planning processes. Federal requirements for transportation planning (23 CFR part 450) call for those public involvement processes to be developed by State and local officials, not the Federal government, and to be prepared in collaboration with the public and stakeholders. The agreed upon public involvement processes must then be documented and periodically evaluated for effectiveness.

Several commenters called for greater clarity of the role of freight rail, noting the unique position, perspectives, and interests of privately owned freight rail lines—as owners, operators, investors, and private sector partners in rail development. Comments particularly focused on the need for States to respect the proprietary nature of inventory and operations data held by private freight rail operators and to protect the confidentiality of such data if obtained for use in State rail plan development. Concern was expressed for including privately funded rail improvements in the State rail plan, as privately funded improvements typically are not included in the plans of States and MPOs. *Response:* FRA recognizes limitations to imposing requirements on and requesting data from private operators and the guidance has been revised to stress the importance of obtaining private freight rail perspectives in State rail plan development while respecting their private business status and the proprietary nature of their market and operating data. Language requesting States to include privately funded rail facility improvements in State and MPO plans, TIPs, and STIPs was retained for information and coordination purposes.

Several commenters noted how rail unions both influence, and are influenced by, the contents of State rail plans, and recommended that those organizations be explicitly mentioned among the stakeholder interests. *Response:* FRA has added ''Rail Labor Organizations'' to the list of stakeholder interests for which an opportunity to contribute to and comment on the development of the State rail plan should be provided.

A commenter recommended including MPOs among the list of stakeholders with whom State rail plan development should be coordinated. *Response:* FRA has added focus on engaging MPOs in the development of State rail plans in the revised guidance.

**Content and Format of State Rail Plans**

Several comments were received recommending a relaxation of the level of detail required of the proposed improvements in the 20-year State rail plan, as well as potential sources of funding and analysis of impacts. Other topics were proposed for more detailed discussion, including the role and planning implication of public-private partnerships, integrated planning for passenger and freight rail, and reference to Service Development Plans (SDPs) in the State rail plan documents.

A commenter suggested requiring less detailed information on commuter rail activities because the State rail plan qualifies States to receive grants for high-speed rail only. *Response:* Operational information about all relevant services, including intercity and commuter rail, is needed for coordinated planning. Such information should be readily available from the public operators of commuter rail. Accordingly, the guidance was not changed.

A commenter expressed concern for requiring inclusion of a detailed list of rail capital projects in the State rail plan due to the cost and administrative burden, as well as the separate MAP–21 requirements for highway and transit project listings in the STIP. Several other commenters questioned the need to identify the distribution of benefits from rail service implementation to regions. *Response:* PRIIA requires State rail plans to include a list of proposed rail improvements, as well as an analysis of the distribution of benefits to regions. Accordingly, FRA has not modified those provisions in the guidance. However, inclusion of rail improvements in the TIPs/STIPs prepared by MPOs and States, while encouraged by the guidance, is not

required. The guidance has been revised to clarify that inclusion of rail improvements in TIPs/STIPs is for information and coordination purposes only.

Several commenters expressed concern for the level and detail of analysis of rail's impact on the range of factors published in the guidance, including congestion mitigation, safety, economic development, air quality, land use, and energy use. A commenter proposed that the impact analyses for the 20-year plan be conducted on a corridor-basis, rather than at the project level. Another commenter expressed concern that specific financing strategies and the level of detail requested for data associated with the passenger and freight rail proposals are too detailed for projects in the early stages of planning over a 20-year period. *Response:* FRA agrees that the descriptive detail of individual rail proposals and discussion of their potential impacts should be most detailed for the immediate 4-year phase of the Rail Service Investment Program, with a more aggregate, general description of impacts and financial information that is ''reasonably expected'' for the outer years of the full 20-year plan. The guidance was revised accordingly, with distinction between the information that is expected of the 4-year phase vs. the outer years of the 20-year plan.

A commenter proposed expanding the discussion of public private partnerships (PPP) to include a fuller description of the concept, benefits, and supportive planning techniques associated with PPPs. *Response:* Text regarding the value of PPPs in rail development and operation has been added.

A commenter noted that planning for passenger and freight rail needs to take place in a coordinated, non-competitive fashion. It was recommended that narrative be added to the guidance to describe the shared rail synergies and win-win solutions that are possible with passenger and freight coordination. *Response:* FRA supports coordinated and integrated rail planning and operation across passenger and freight markets and has revised the guidance in several sections accordingly.

A commenter suggested that States be required to include discussion of SDPs in State rail plans. *Response:* While an SDP is a vital plan for passenger rail corridor investment, the time horizon of each SDP may not always fit within every State's long-range rail improvement framework. States may optionally choose to include discussion of SDPs where they exist.

**Procedures for Preparing and Submitting State Rail Plans**

Several comments were received regarding the administrative preparation of State rail plans, as well as review and acceptance by FRA. Some commenters proposed increasing the frequency of State rail plan updates and lengthening the planning horizon. Other commenters requested clarification of when and how FRA would review the draft documents.

A commenter sought clarification of the eligibility of States to receive funding under Section 301, 302, and 501 of PRIIA if their State rail plans were under development at the time of publication of final State Rail Plan Guidance. Another commenter requested clarification of FRA's timetable for reviewing and accepting State rail plans if a Notice of Funding Availability (NOFA) should happen to be issued for capital grants under Sections 301, 302, and 501 prior to ''acceptance'' of the plan by FRA. *Response:* The guidance has been revised to clarify that State rail plans that were in preparation prior to issuance of this final guidance, and that substantially meet the requirements of PRIIA, will be deemed by FRA to meet program and project eligibility requirements for grants authorized under Sections 301, 302, and 501 of PRIIA. The guidance has been revised to add that a State rail plan for which contractor assistance had reached the ''notice-to-proceed'' stage will be considered ''underway.'' Also, FRA will exercise due diligence in reviewing as-yet-unapproved State rail plans in a timely manner when any future funding NOFAs may be issued.

A commenter questioned the need for States to establish two separate authorities and asked if a single authority could serve both purposes. *Response:* PRIIA calls for States to designate the two authorities noted above; however the guidance was revised to indicate that the same State entity can serve both purposes.

A commenter suggested that the guidance outline a clear process and timeline for FRA review and acceptance of draft and final State rail plans, as well as a process for submitting amended State rail plans. *Response:* The published draft guidance described a formal process for State rail plan submittal to FRA and notification of receipt by FRA, upon which FRA has committed to a 90-day review and acceptance schedule. Language has been added clarifying that updates of State rail plans may be submitted at any time the State deems necessary, for which FRA would follow the process described for all plan submissions—regardless of their frequency or what triggered the update.

A commenter noted potentially conflicting statements in the guidance regarding submission of State rail plans in draft form to FRA vs. transmittal of the final draft. *Response:* The guidance was clarified to describe how States are encouraged to submit preliminary drafts of their State rail plans to FRA for review and comment prior to formal submission of the final draft plan.

**Data Requirements for State Rail Plans**

Most commenters expressed concern for the amount of data collection and analysis required in State rail plans—particularly for rail concepts that were more than 20 years in the future. Commenters expressed concern for the availability of data, particularly for privately owned/operated services. Special attention was proposed for collecting information around stations and intermodal transfer points.

A commenter noted that data was not available for all of the metrics contained in Section 207 of PRIIA and that States should be responsible only for accessing information that is actually available. Two other commenters proposed that FRA assemble the required data inventories and provide them to the States as a cost-saving measure and to ensure consistency. *Response:* FRA has revised the guidance to indicate that only available data should be required for inclusion in State rail plans. The suggestion that FRA compile the necessary data resources will be taken under advisement and considered, subject to resource availability at the Federal level.

A commenter noted that the effort entailed in compiling demographic data for all station areas could be excessive. Four other commenters expressed concern that assembling detailed information on station facility improvements and area land use plans would be excessive and possibly duplicative of local plans, necessitating the provision of more detailed guidance on the methodologies and data inputs. *Response:* The guidance has been revised to remove the request for detailed demographic data and instead promotes close integration of State rail plan development within the statewide/nonmetropolitan transportation planning process, which could provide ready access to land use data for entire study areas, corridors, and station-specific information. FRA also agrees with the concern about collecting information on improvements to non-major station facilities and has revised

the presentation of that information at a summary or program level. However, station information for major passenger and freight intermodal connections and facilities is an explicit provision in PRIIA, and remains a part of the guidance. Lastly, the guidance was revised to call for ''a summary level of discussion'' on land use impacts.

A commenter expressed concern for reporting station-to-station intrastate ridership for any but the top ten city pairs, proposing that States simply report boardings and alightings. *Response:* A comprehensive profile of current usage is a critical component to preparation of a credible State rail plan, and limiting ridership flows to the top city pairs will not provide useful information on growth trends in small and mid-sized markets. Therefore, no change has been made.

Several commenters proposed not collecting information on the owner/operator status of rail lines, citing the difficulty, expense, and inconsistency with PRIIA. *Response:* Owner/operator status of rail lines as a key element of the inventory of the existing rail services and facilities within the State, which is an explicit requirement of PRIIA. The guidance has been revised to identify the availability of the data in GIS format from the National Transportation Atlas Database (NTAD), which is maintained online by the U.S. Department of Transportation. In addition, information on publicly funded commuter rail operations should be available through the MPO if in an urbanized area or State if in a non-urbanized area.

A commenter regarded ''railway assets currently out of service or rail banked'' as abandoned and expressed concern for the burden of assembling an inventory of those lines. *Response:* Rail-banked and out of service rail lines have not been formally abandoned and therefore remain important rail facilities to be inventoried.

A commenter recommended adding a section on passenger station needs and plans. *Response:* FRA agrees that station planning, including consideration of usage, station area development and interfaces with other modes, is important and the topic has been added to the guidance.

A commenter suggested that evaluation of passenger rail projects for impact on livability, land use, and walkability would be too detailed for a statewide level document describing projects at the systems planning stage of development. *Response:* FRA has revised the guidance to call for analysis of land use impacts only for those projects that have reached the environmental analysis phase, with a summary discussion of land use impacts required elsewhere.

A commenter requested that FRA provide benefit-cost formulas for use by States. *Response:* Currently, FRA does not have specific guidance on benefit-cost analyses but may be able to provide technical assistance upon request. However, the DOT Office of Inspector General recently released a report highlighting best practices in conducting rail benefits assessments, available at: *http://www.oig.dot.gov/sites/dot/files/OIG–HSR-Best-Practice-Public-Benefits-Report.pdf.* Additionally, benefit-cost guidance used for the TIGER grant program can be used to structure a rail analysis: *http://www.dot.gov/sites/dot.dev/files/docs/TIGER%202013%20NOFA_BCA%20Guidance_0.pdf.*

A commenter requested more information on the list of performance measures proposed in Appendix 1 for possible inclusion in Section 2.1. *Response:* The guidance was not revised because the measures were listed as optional information items offered for consideration, subject to their availability.

A commenter suggested that ridership information may not be available from more than 5 years prior and proposed modifying the request to apply to only the previous five years. Another commenter noted that passenger train miles (adjusted for cancellations/terminations) is typically available only from Amtrak. Another commenter proposed that passenger mile data be provided on a route basis. *Response:* FRA has revised the guidance to request data only for only the past 5 years, with States encouraged to use data from earlier years if they have it. The guidance also was revised to advise that ''general estimates'' of passenger mile data are acceptable for state-supported services, with route-level data acceptable for long-distance trains.

A commenter expressed concern for the lack of intercity rail mode share data, as required by the draft guidance for State rail plans. *Response:* FRA has revised the guidance to require inclusion of mode share data only if it is available, or able to be calculated, through the use of existing information.

A commenter suggested that commuter rail mode share be calculated as commuter rail trips per total public transit trips. *Response:* FRA has retained the definition given in the draft guidance in order to provide a consistent measurement standard for all State rail plans. Individual States may optionally choose additional measures and alternative definitions of mode share if they wish.

**Availability of Final Guidance**

Notice is hereby given that FRA has released final State Rail Plan Guidance, which is available at: *http://www.fra.dot.gov/Page/P0511.* The purpose of FRA's final State Rail Plan Guidance is to describe the processes for the development, submission, and acceptance of State rail plans. State rail plans are documents that are required under Section 303 of the Passenger Rail Investment and Improvement Act of 2008.

**Paul Nissenbaum,**

*Associate Administrator for Railroad Policy and Development.*

[FR Doc. 2013–22679 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Marine Transportation System National Advisory Council

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of request for applications.

**SUMMARY:** The Maritime Administration (MarAd) is seeking applications for membership on the Marine Transportation System National Advisory Council (MTSNAC). The Council advises and makes recommendations to the Secretary of Transportation (Secretary) via the Maritime Administrator on impediments to the effective use and expansion of America's Marine Highways; waterways and ports, and their intermodal, road, rail, and marine highway connections; shipbuilding capacity; and guidelines for the development of a national freight policy from a marine transportation perspective.

**DATES:** MTSNAC applications should be received on or before October 18, 2013.

**ADDRESSES:** Submit your application by mail, email, or facsimile to MarAd-MTSNAC Designated Federal Officer, Room W21–310, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Email: *nac.marad@dot.gov.* Fax: (202) 366–6988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Lolich, MTSNAC Designated Federal Officer, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–310, Washington, DC 20590, *Richard.Lolich@*

*dot.gov,* Phone: (202)–366–0704, Fax: 202–366–6988.

**SUPPLEMENTARY INFORMATION:** The MTSNAC is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 (Public Law 92–463) and the Energy Independence and Security Act of 2007 (Public Law 110–140). The MTSNAC advises, consults with, reports to, and makes recommendations to the Secretary on matters relating to the Marine Transportation System. Such matters may include, but are not limited to:

- Impediments that hinder the effective use and expansion of America's Marine Highways, and the expanded use of the marine transportation system for freight and passengers;
- Waterways and ports, and their intermodal road, rail, and marine highway connections and actions required to meet current and future national transportation system integration needs;
- Strategy, policy and goals to ensure an environmentally responsible and safe system that improves the global competitiveness and national security of the U.S.;
- Guidelines for the development of a national freight policy from a marine transportation perspective; and
- Such other matters, related to those above, that the Secretary or sponsor may charge the Council with addressing.

The full council normally meets at least two to three times per fiscal year. The MTSNAC subcommittees may hold meetings and teleconferences more frequently, as needed. It may also meet for extraordinary purposes.

**Application Request**

If you are interested in applying to become a member of the Council, you may request an application by contacting the MTSNAC Designated Federal Officer [See the section entitled **FOR FURTHER INFORMATION CONTACT** listed above]. When requesting the application, please include your contact information so that we may send the application form to you. Once you have completed your application, send it to Mr. Richard Lolich, Designated Federal Officer (DFO) of the Marine Transportation System National Advisory Council in time for it to be received by MarAd on or before October 18, 2013.

**Position Information**

Nine (9) positions will be filled. Individuals with experience in one or more of the following sectors of the marine transportation industry are encouraged to apply:

- Ports and Terminal Operators.
- Shippers.
- Vessel Operators.
- Non-Marine Transportation Providers.
- Metropolitan Planning Organizations and State DOTs.
- Shipbuilders.
- Labor and Workforce Development.
- Academia.

**Prohibitions**

Registered lobbyists are not eligible to serve on federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Public Law 110–81, as amended).

**Period or Service and Expense Reimbursement**

Each MTSNAC member serves for a term of two years. Members may serve consecutive terms. All members serve at their own expense and receive no salary. While attending meetings or when otherwise engaged in committee business, members will be reimbursed for travel and per diem expenses as permitted under applicable Federal Travel Regulations.

**Authority:** 5 U.S.C. app. 2; 41 CFR parts 101–6 and 102–3; DOT Order 1120.3B.

By Order of the Maritime Administrator:

Dated: September 12, 2013.

**Julie Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–22680 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2013–0137]**

### Pipeline Safety: Information Collection Activities

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and approval. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 14, 2013, (78 FR 36016). PHMSA received one comment in response to that notice. PHMSA is publishing this notice to respond to the comment, provide the public with an additional 30 days to comment, and announce that the revised Information Collection will be submitted to the Office of Management and Budget (OMB) for approval.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for PHMSA, 725 17th Street NW., Washington, DC 20503.

**DATES:** Comments must be submitted on or before October 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. This information collection is contained in the pipeline safety regulations at 49 CFR Parts 190–199.

**Summary of Topic Comments/ Responses**

During the two-month response period for the information collection renewal, PHMSA received one comment from the Pipeline Safety Trust (PST). This 30-day notice responds to the comments, which may be found at *http://www.regulations.gov,* at docket number PHMSA–2013–0137. The following is a summary of the comment received:

*Comment:* The Pipeline Safety Trust (PST) believes that improvements are needed to the data collected by the NPMS. They point out, ''The accuracy of the data is not high enough to adequately assist local communities who are planning or preparing for potential emergencies;'' and suggest that PHMSA require, rather than suggest, NPMS data submissions be made annually. The PST also requests that PHMSA require data on pipelines that are in High Consequence Areas (HCAs) to be submitted at a greater degree of accuracy and recommends that PHMSA

heeds NTSB's (P–11–1) recommendation that pipeline operators share ''. . . system-specific information, including pipe diameter, operating pressure, product transported, and potential impact radius, about their pipeline systems . . .'' through the NPMS system. PST believes that sharing this information would be a good way to make this important data accessible to emergency management and planning professionals in local communities.

*PHMSA's Response:* PHMSA will consider PST's comment when evaluating further changes to the NPMS data.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) type of request; (4) abstract of the information collection activity; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity.

PHMSA requests comments on the following information collection:

**SUPPLEMENTARY INFORMATION:**

*Title:* National Pipeline Mapping Program.

*OMB Control Number:* 2137–0596.

*Type of Request:* Renewal of a Previously Approved Information Collection.

*Abstract:* Each operator of a pipeline facility (except distribution lines and gathering lines) must provide contact information and geospatial data on their pipeline system. This information should be updated on an annual basis. The provided information is incorporated into the National Pipeline Mapping System (NPMS) to support various regulatory programs, pipeline inspections, and authorized external customers. The periodic updates of operator pipeline data inform the NPMS of any changes to the data over the previous year and allow PHMSA to maintain and improve the accuracy of the information.

*Affected Public:* Operators of pipeline facilities (except distribution lines and gathering lines).

*Estimated Number of Responses:* 894.

*Annual Estimated Total Annual Burden Hours:* 16,312 hours.

*Frequency of Collection:* Annual.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of the date of publication in the **Federal Register**.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on September 12, 2013, under authority delegated in 49 CFR 1.97.

**John A. Gale,**

*Director, Office of Standards and Rulemaking.*

[FR Doc. 2013–22622 Filed 9–17–13; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 12, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before October 18, 2013 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

#### Internal Revenue Service (IRS)

*OMB Number:* 1545–1068.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* INTL–362–88 (T.D. 8618) Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation.

*Abstract:* The election and recordkeeping requirements are necessary to exclude certain high-taxed or active business income from subpart F income or to include certain income in the appropriate category of subpart F income. The recordkeeping and election procedures allow the U.S. shareholders and the IRS to know the amount of the controlled foreign corporation's subpart F income.

*Affected Public:* Private Sector: Businesses and other for-profits.

*Estimated Annual Burden Hours:* 50,417.

*OMB Number:* 1545–1296.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* PS–27–91 (TD 8442) Procedural Rules for Excise Taxes Currently Reportable on Form 720, PS–8–95 (TD 8685) Deposits of Excise Taxes.

*Abstract:* Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These regulations provide reporting and recordkeeping requirements related to return, payments, and deposits of tax for excise taxes currently reportable on Form 720.

*Affected Public:* Private Sector: Businesses and other for-profits.

*Estimated Annual Burden Hours:* 242,350.

*OMB Number:* 1545–1574.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Tuition Payments Statement.

*Form:* 1098–T.

*Abstract:* Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information regarding tuition payments to the IRS and to students. Form 1098–T has been developed to meet this requirement.

*Affected Public:* Private Sector: Businesses and other for-profits; Not-for-profit institutions.

*Estimated Annual Burden Hours:* 4,848,090.

*OMB Number:* 1545–1721.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Taxable REIT Subsidiary Election.

*Form:* 8875.

*Abstract:* A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in 26 U.S.C. section 856(l).

*Affected Public:* Private Sector: Businesses and other for-profits.

*Estimated Annual Burden Hours:* 9,980.

*OMB Number:* 1545–1862.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa.

*Form:* 8316.

*Abstract:* Certain foreign students and other nonresident visitors are exempt from FICA tax for services performed as specified in the Immigration and Naturalization Act. Applicants for refund of this FICA tax withheld by their employer must complete Form 8316 to verify that they are entitled to a refund of the FICA, that the employer has not paid back any part of the tax withheld and that the taxpayer has attempted to secure a refund from his/her employer.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 5,500.

*OMB Number:* 1545–1873.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Revenue Procedure 2004–15, Waivers of Minimum Funding Standards.

*Abstract:* This revenue procedure describes the process for obtaining a waiver from the minimum funding standards set forth in section 412 of the Code.

*Affected Public:* Private Sector; Businesses or other for-profits.

*Estimated Annual Burden Hours:* 4,730.

*OMB Number:* 1545–2041.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Expenses Paid by Certain Whaling Captains in Support of Native Alaskan Subsistence Whaling.

*Abstract:* This document provides guidelines under § 170(n) for substantiating certain expenses of carrying out sanctioned whaling activities.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 48.

*OMB Number:* 1545–2043.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* IRS e-file Signature Authorization for Form 1065–B.

*Form:* 8879–B.

*Abstract:* Form 8879–B is used when a personal identification number (PIN) is used to electronically sign the electronic tax return, and, if applicable, consent to an electronic funds withdrawal.

*Affected Public:* Private Sector; Businesses or other for-profits.

*Estimated Annual Burden Hours:* 273.

*OMB Number:* 1545–2044.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Rev. Proc. 2006–54, Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

*Abstract:* Taxpayers who believe that the actions of the United States, a treaty country, or both, result or will result in taxation that is contrary to the provisions of an applicable tax treaty are required to submit the requested information in order to receive assistance from the IRS official acting as the U.S. competent authority. The information is used to assist the taxpayer in reaching a mutual agreement with the IRS and the appropriate foreign competent authority.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 9,000.

*OMB Number:* 1545–2047.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Rev. Proc. 2007–21—Regarding Secs. 6707 or 6707A; Rescission Request Procedures.

*Abstract:* This revenue procedure provides guidance to persons who are assessed a penalty under section 6707A or 6707 of the Internal Revenue Code, and who may request rescission of those penalties from the Commissioner.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden Hours:* 430.

*OMB Number:* 1545–2049.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Notice 2006–107—Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities.

*Abstract:* This notice contains model forms that may be used by employers to notify plan participants of their diversification rights under sections 901 and 507 of the Pension Protection Act of 2006.

*Affected Public:* Private Sector; Businesses or other for-profits.

*Estimated Annual Burden Hours:* 7,725.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2013–22647 Filed 9–17–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Notice of Funds Availability Inviting Applications for Grants for Transportation of Veterans in Highly Rural Areas; Amendment; Correction

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice; extension of NOFA application deadline; Correction.

**SUMMARY:** The Department of Veterans Affairs (VA) published a notice extending the application deadline for funds available under the Grant Program for Transportation of Veterans in Highly Rural Areas in the **Federal Register** on September 13, 2013 (78 FR 56773), that contained an error. In the **FOR FURTHER INFORMATION CONTACT** section of the notice, VA announced that a copy of the Application Package can be downloaded directly from ''*http://www.ruralhealth.va.gov/coordination-pilot/index.asp''*. It should have read, ''*http://www.grants.gov/web/grants/view-opportunity.html?oppId=237336*''. This error is corrected by this notice.

**FOR FURTHER INFORMATION CONTACT:** Darren Wallace, National Coordinator, Highly Rural Transportation Grants, Veterans Transportation Program, Chief Business Office (10NB2G), 2957 Clairmont Road, Atlanta, GA 30329; (404) 828–5380 (this is not a toll-free number).

*Correction*

In FR Doc. 2013–22334, published on September 13, 2013, at 78 FR 56773, make the following correction:

On page 56773, in the third column, at the **FOR FURTHER INFORMATION CONTACT** heading, remove ''*http://www.ruralhealth.va.gov/coordination-pilot/index.asp*'' and add, in its place, ''*http://www.grants.gov/web/grants/view-opportunity.html?oppId=237336*''.

Approved: September 13, 2013.

**Robert C. McFetridge,**

*Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–22699 Filed 9–17–13; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 78 Wednesday,
No. 181 September 18, 2013

Part II

## The President

Federal Register
Vol. 78, No. 181
Wednesday, September 18, 2013

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9016 of September 13, 2013**

## National Hispanic Heritage Month, 2013

**By the President of the United States of America**

**A Proclamation**

From the earliest days of our Republic, Hispanic Americans have written crucial chapters in our national story. Hispanics have honorably defended our country in war and built prosperity during times of peace. They run successful businesses, teach our next generation of leaders, and pioneer scientific and technological breakthroughs. This month, America acknowledges these vital contributions and celebrates our Hispanic heritage.

Hispanic Americans represent an array of distinct and vibrant cultures, each of which enriches communities in valuable ways. Just as America embraces a rich blend of backgrounds, those who journey to our shores embrace America. Sharing the dream of equality and boundless opportunity, many Hispanics have marched for social justice and helped advance America's journey toward a more perfect Union. Last year, I was proud to establish the César E. Chávez National Monument in honor of an American hero, a man who reminded us that every life has value, that together, those who recognize their common humanity have the power to shape a better world.

As César Chávez's example teaches us, we must never scale back our dreams. My Administration remains committed to building a rising, thriving middle class, a middle class accessible to the Hispanic community and to all Americans. As we continue to implement the Affordable Care Act, more than 10 million uninsured Latinos will gain access to coverage. To reduce health disparities, my Administration will work to educate, engage, and enroll Hispanic Americans in the Health Insurance Marketplace.

Last year, we lifted the shadow of deportation off young people who are American in every way but on paper. Today, I am as determined as ever to pass commonsense immigration reform—reform that helps American workers get a fairer deal, adds more than one trillion dollars to our economy, and provides a pathway to earned citizenship. A bipartisan bill consistent with these principles has already passed the Senate, and a growing coalition of Republicans and Democrats is calling for action.

Whether our ancestors crossed the Atlantic in 1790 or the Rio Grande in 1970, Americans are bound by a set of common values—a love of liberty and justice, the belief that a better life should await anyone willing to work for it. As we celebrate the unique influences of Hispanic cultures during National Hispanic Heritage Month, let us also rededicate ourselves to realizing our shared aspirations.

To honor the achievements of Hispanics in America, the Congress by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 15 through October 15, 2013, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all Americans to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–22885
Filed 9–17–13; 11:15 am]
Billing code 3295–F3

# Presidential Documents

**Proclamation 9017 of September 13, 2013**

## National Farm Safety and Health Week, 2013

**By the President of the United States of America**

**A Proclamation**

Farmers, ranchers, and farmworkers form the cornerstones of some of America's most essential economic sectors. Their products feed, clothe, and fuel our Nation. Their way of life—handed down from generation to generation—is central to the American story. During National Farm Safety and Health Week, we celebrate our agricultural producers' values, experiences, and contributions, and we recommit to secure work environments on all our country's farms.

For many agricultural workers, the risk of injury and illness is a daily reality. They face multiple challenges, including entering hazardous grain storage bins, handling livestock and chemicals, and transporting large machinery on our Nation's rural roadways. I encourage agricultural producers and their families and communities to participate in comprehensive farm safety and health programs, take precautions, and prepare themselves for emergencies. I urge all Americans to respect farming and ranching families by driving rural roadways with care, and I ask communities to remember agricultural workers' needs in setting up health facilities and emergency response programs.

As the fall harvest season begins, we pay tribute to the generations of Americans who have devoted themselves to supplying the basic materials that make our country work. This week, we resolve to make farms and ranches safer places to live, work, and raise families.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 15 through September 21, 2013, as National Farm Safety and Health Week. I call upon the agencies, organizations, businesses, and extension services that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge Americans to honor our agricultural heritage and express appreciation to our farmers, ranchers, and farmworkers for their contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–22886
Filed 9–17–13; 11:15 am]
Billing code 3295–F3

# Presidential Documents

**Proclamation 9018 of September 13, 2013**

## National Hispanic-Serving Institutions Week, 2013

**By the President of the United States of America**

**A Proclamation**

There is no better investment than a great education—both for young people individually, and for our Nation as a whole. In an increasingly competitive, knowledge-based economy, higher education helps build a skilled workforce and provides clear pathways to success. Hispanic-Serving Institutions (HSIs) impart essential knowledge while broadening horizons and giving students the tools to pursue their own measure of happiness. During National Hispanic-Serving Institutions Week, we celebrate these institutions, renew our support for their mission, and recommit to helping tomorrow's leaders reach their fullest potential.

Preparing to fill the jobs of today and tomorrow requires our Nation to share in the responsibility of making college more accessible, affordable, and attainable for all Americans. As more than 20 percent of our Nation's elementary and high school students are Hispanic, HSIs play an integral role in helping fulfill this commitment. That is why the Federal Government will invest more than $1 billion in these vital institutions over the course of this decade. At the same time, we are tackling rising college costs, expanding Pell Grants, promoting innovation and value in higher education, and improving student loan repayment options. If we continue to support and challenge our students, I am confident that America can have the world's highest share of college graduates by 2020.

Hispanic-Serving Institutions enable young people and adults to explore their intellectual passions. From the arts and humanities to education to science, technology, engineering, and mathematics, HSIs help students hone their talents, launch their careers, and eventually become leaders in their fields. As we honor America's Hispanic-Serving Institutions, let us fight to remain a country that rewards hard work, responsibility, and the pursuit of education. Let us advance a principle at the heart of the American dream—that no matter who you are or where you come from, in the United States of America, you can make it if you try.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 15 through September 21, 2013, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–22887
Filed 9–17–13; 11:15 am]
Billing code 3295–F3

# Reader Aids

**Federal Register**

Vol. 78, No. 181

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**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

## FEDERAL REGISTER PAGES AND DATE, SEPTEMBER



## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

**Last List August 13, 2013**

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