



FEDERAL REGISTER

Vol. 78

Wednesday,

No. 186

September 25, 2013

Pages 58855–59160

OFFICE OF THE FEDERAL REGISTER



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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche 202-741-6005
Assistance with Federal agency subscriptions 202-741-6005

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, 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



Contents

Federal Register

Vol. 78, No. 186

Wednesday, September 25, 2013

Agency for Healthcare Research and Quality

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59034–59035
 Patient Safety Organizations:
 Voluntary Relinquishment from Cogent Patient Safety Organization, Inc., 59036

Agricultural Marketing Service

PROPOSED RULES

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order:
 Changes to the Membership of the Softwood Lumber Board, 58956–58960

Agriculture Department

See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58991

Animal and Plant Health Inspection Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit From Quarantined Areas, 58992–58993
 Importation of Fresh Pomegranates From Chile, 58991–58992
 Phytophthora Ramorum; Quarantine and Regulations, 58993–58994

Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59010
 Surplus Military Installation Land Designated for Disposal: Ernest Veuve Hall USARC/AMSA 75, T–25, Fort Missoula, MT, 59011

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59036–59037

Centers for Medicare & Medicaid Services

PROPOSED RULES

Basic Health Program:
 State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; etc., 59122–59151

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Tribal Child Support Enforcement Direct Funding Request, 59037–59038

Coast Guard

RULES

Safety Zones:
 Catawba Island Club Wedding Event, Catawba Island Club, Catawba Island, OH, 58880–58882
 Chelsea River, Boston Inner Harbor, Boston, MA, 58882–58884
 San Diego Shark Fest Swim; San Diego Bay, San Diego, CA, 58878–58880
 Special Local Regulations:
 Frogtown Race Regatta; Maumee River, Toledo, OH, 58875–58877

PROPOSED RULES

Dry Cargo Residue Discharges in the Great Lakes, 58986–58987
 Electrical Equipment in Hazardous Locations, 58989–58990

Commerce Department

See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission

NOTICES

Meetings; Sunshine Act, 59008–59009

Comptroller of the Currency

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Assessments of Fees, 59096–59097
 Guidance on Sound Incentive Compensation Practices, 59095–59096

Defense Department

See Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Termination Settlement Proposal Forms, 59009–59010

Delaware River Basin Commission

PROPOSED RULES

Water Quality, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH:
 Public Hearing, 58985–58986

Department of Transportation

See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration

NOTICES

Decisions and Orders:
 Gabriel Sanchez, M.D., 59060–59064
 Importers of Controlled Substances; Applications:
 Fisher Clinical Services, Inc., 59064–59065

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Improving Performance of Federal Permitting and Review of Infrastructure Projects, 59011

Interest Rates of Federal Student Loans under the William D. Ford Federal Direct Loan Program, 59011–59012

Meetings:

Environmental Management Site-Specific Advisory Board Chairs, 59012–59013

President's Council of Advisors on Science and Technology; Teleconference, 59013

Environmental Protection Agency**RULES**

Air Quality State Implementation Plans; Approvals and Promulgations:

Kentucky; Stage II Requirements for Enterprise Holdings, Inc. at Cincinnati/Northern Kentucky International Airport in Boone County, 58884–58886

State Hazardous Waste Management Program: Louisiana; Final Authorization of State-initiated Changes and Incorporation by Reference, 58890–58897

Tolerance Requirements; Exemptions: FD and C Blue No. 1, 58886–58890

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Navajo Nation; Regional Haze Requirements for Navajo Generating Station, 58987–58988

State Hazardous Waste Management Program: Louisiana; Final Authorization of State-initiated Changes and Incorporation by Reference, 58988

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59014–59017

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Willingness to Pay Survey for Santa Cruz River Management Options in Southern Arizona, 59017

Meetings:

Great Lakes Advisory Board, 59018–59019

Mobile Sources Technical Review Subcommittee, 59017–59018

Science Advisory Board's Scientific and Technological Achievement Awards Committee, 59018

Product Cancellation Order for Certain Pesticide Registrations, 59019–59021

Registration Reviews:

Pesticide Dockets Opened for Review and Comment, 59021–59023

Executive Office of the President

See Presidential Documents

Federal Aviation Administration**RULES**

Airworthiness Directives:

Agusta S.p.A. (Type certificate currently held by AgustaWestland S.p.A) (Agusta) Helicopters, 58868–58872

GA 8 Airvan (Pty) Ltd Airplanes, 58872–58874
PILATUS AIRCRAFT LTD. Airplanes, 58874–58875

PROPOSED RULES

Airworthiness Directives:

Airbus Airplanes, 58975–58982

ATR – GIE Avions de Transport Regional Airplanes, 58967–58970

BAE SYSTEMS (OPERATIONS) LIMITED Airplanes, 58960–58962

Bombardier, Inc. Airplanes, 58965–58967

Dassault Aviation Airplanes, 58973–58975

The Boeing Company Airplanes, 58962–58965, 58970–58973, 58982–58985

Federal Communications Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59023–59031

Federal Election Commission**NOTICES**

Meetings; Sunshine Act, 59031

Federal Emergency Management Agency**NOTICES**

Emergency Declarations:

Colorado; Amendment No. 1, 59043

Colorado; Amendment No. 2, 59043

Major Disaster Declarations:

Colorado; Amendment No. 1, 59044

Colorado; Amendment No. 2, 59043–59044

Major Disasters and Related Determinations:

Arkansas, 59044–59045

Missouri, 59045

Meetings:

Board of Visitors for the National Fire Academy, 59045–59046

Federal Energy Regulatory Commission**NOTICES**

Combined Filings, 59013–59014

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:

Lakeswind Power Partners, LLC, 59014

Federal Highway Administration**NOTICES**

Final Federal Agency Action on Proposed Highway in California, 59085–59086

Federal Motor Carrier Safety Administration**RULES**

Highway-Rail Grade Crossings; Safe Clearance, 58915–58923

Federal Railroad Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59086–59088

Federal Reserve System**NOTICES**

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 59031–59032

Federal Trade Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59032–59034

Fish and Wildlife Service**RULES**

Endangered and Threatened Wildlife and Plants:

Designation of Critical Habitat for the Grotto Sculpin (Cottus specus), 58923–58938

Determination of Endangered Species Status for the Grotto Sculpin (Cottus specus) Throughout Its Range, 58938–58955

NOTICES

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications, 59051–59052
Permits:
Endangered Species, 59052–59053

Food and Drug Administration**NOTICES**

Guidance for Industry and Food and Drug Administration Staff:
Mobile Medical Applications, 59038–59039

Foreign Assets Control Office**NOTICES**

Blocking and Unblocking of Persons and Properties, 59097–59098

Foreign-Trade Zones Board**NOTICES**

Proposed Production Activities:
Rolls Royce Energy Systems, Inc., Foreign-Trade Zone 138, Columbus, OH, 58995

Forest Service**NOTICES**

Meetings:
National Urban and Community Forestry Advisory Council, 58994

General Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Termination Settlement Proposal Forms, 59009–59010

Geological Survey**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Nonindigenous Aquatic Species Sighting Reporting Form, 59053–59054

Health and Human Services Department

See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Healthcare Research and Quality Agency

See Agency for Healthcare Research and Quality

Homeland Security Department

See Coast Guard
See Federal Emergency Management Agency

RULES

Commonwealth of the Northern Mariana Islands—Only
Transitional Worker Numerical Limitation for Fiscal Year 2014, 58867–58868

Housing and Urban Development Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Family Self-Sufficiency Program, 59048–59049
Federal Labor Standards Questionnaire(s); Complaint Intake Form, 59046–59047

Public Housing Energy Audits and Utility Allowances, 59049–59050
Semi-annual Labor Standards Enforcement Report – Local Contracting Agencies, 59047–59048

Industry and Security Bureau**NOTICES**

Orders Denying Export Privileges:
Iman Kazerani, 58995–58996

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59050–59051

Internal Revenue Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59098
Meetings:
Art Advisory Panel, 59098–59099

International Trade Administration**NOTICES**

Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Tapered Roller Bearings from the People's Republic of China, 58996–58997
Antidumping Duty Investigations; Results, Extensions, Amendments, etc.:
Chlorinated Isocyanurates from Japan, 58997–59001
Countervailing Duty Investigations; Results, Extensions, Amendments, etc.:
Chlorinated Isocyanurates from the People's Republic of China, 59001–59004
Export Trade Certificates of Review, 59004–59005
Meetings:
Civil Nuclear Trade Advisory Committee, 59005

International Trade Commission**NOTICES**

Antidumping and Countervailing Duty Investigations; Results, Extensions, Amendments, etc.:
Grain-Oriented Electrical Steel from China, Czech Republic, Germany, Japan, Korea, Poland, and Russia, 59059–59060

Justice Department

See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office**NOTICES**

Workshops:
Interview Room Recording System Standard and License Plate Reader Standard, 59065

Labor Department

See Mine Safety and Health Administration
See Workers Compensation Programs Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Requirements of the Health Care Continuation Coverage Provisions, 59065–59066

Land Management Bureau**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59054–59055

Realty Actions:

Modified Competitive Sealed-Bid Sale of Public Land at Schoolhouse Butte, Humboldt County, NV, 59055–59058

Requests for Nominations:

Wild Horse and Burro Advisory Board, 59058–59059

Mine Safety and Health Administration**NOTICES**

Petitions for Modification of Application of Existing Mandatory Safety Standards, 59066–59068

National Aeronautics and Space Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Termination Settlement Proposal Forms, 59009–59010

National Highway Traffic Safety Administration**NOTICES**

Petitions for Inconsequential Noncompliance:

Fuji Heavy Industries U.S.A., Inc., 59088–59089

Nissan North America, Inc., 59090–59092

Spartan Motors, Inc. on Behalf of Spartan Motors Chassis, Inc., 59089–59090

Petitions:

Nonconforming 1988–1996 Alpina B10 Passenger Cars, Importation Eligibility, 59092–59093

National Institutes of Health**NOTICES**

Government-Owned Inventions; Availability for Licensing, 59039–59040

Meetings:

Center for Scientific Review, 59040–59041

National Institute of Environmental Health Sciences, 59042

National Institute of General Medical Sciences, 59040

National Institute of Neurological Disorders and Stroke, 59041–59042

National Institute on Aging, 59042–59043

National Institute on Deafness and Other Communication Disorders, 59041

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Exclusive Economic Zone Off Alaska

Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 58955

NOTICES

Permits:

Endangered and Threatened Species; Take of Anadromous Fish, 59005–59007

Nuclear Regulatory Commission**NOTICES**

Confirmatory Orders:

Chicago Bridge and Iron, 59068–59073

License Amendments:

Pacific Gas and Electric Co., Humboldt Bay Independent Spent Fuel Storage Installation, 59073–59074

Meetings:

Advisory Committee on Reactor Safeguards, 59075–59076

Advisory Committee on Reactor Safeguards

Subcommittee on Regulatory Policies and Practices, 59074

Advisory Committee on Reactor Safeguards

Subcommittee on US–APWR, 59076

Patent and Trademark Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59007–59008

Interim Patent Term Extensions:

U.S. Patent No. 5,454,779; ResQPump(Registered)/ResQPOD(Registered) ITD, 59008

U.S. Patent No. 5,624,923; lixivaptan, 59008

Pipeline and Hazardous Materials Safety Administration**RULES**

Highway-Rail Grade Crossings; Safe Clearance, 58915–58923

Pipeline Safety:

Administrative Procedures; Updates and Technical Corrections, 58897–58915

Presidential Documents**PROCLAMATIONS**

Special Observances:

National Employer Support of the Guard and Reserve Week (Proc. 9022), 59153–59156

National Historically Black Colleges and Universities Week (Proc. 9023), 59157–59158

National POW/MIA Recognition Day (Proc. 9021), 58865–58866

ADMINISTRATIVE ORDERS

Government Agencies and Employees:

National Intelligence, Office of the Director of;

Designation of Officers To Act as Director

(Memorandum of September 20, 2013), 59159–59160

Narcotics and Drugs:

Major Drug Transit or Illicit Drug Producing Countries (Presidential Determination)

No. 2013–14 of September 13, 2013, 58855–58858

Syria; Prevention of Use or Proliferation of Chemical Weapons and Related Material Through Provision of Defense Articles and Services (Presidential Determination):

No. 2013–15 of September 16, 2013, 58859–58860

Trafficking in Persons; Foreign Governments' Efforts Regarding (Presidential Determination):

No. 2013–16 of September 17, 2013, 58861–58863

Securities and Exchange Commission**NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes:

NASDAQ OMX PHLX LLC, 59076–59079

Small Business Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59079–59080

Meetings:

Audit and Financial Management Advisory Committee, 59080

State Department**NOTICES**

Culturally Significant Objects Imported for Exhibition: Delacroix and the Matter of Finish, 59080–59081

Meetings:

Cultural Property Advisory Committee, 59081–59082

Surface Transportation Board**NOTICES**

Quarterly Rail Cost Adjustment Factor, 59093–59095

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

See National Highway Traffic Safety Administration

See Pipeline and Hazardous Materials Safety Administration

See Surface Transportation Board

NOTICES

Privacy Act; Systems of Records, 59082–59085

Treasury Department

See Comptroller of the Currency

See Foreign Assets Control Office

See Internal Revenue Service

Veterans Affairs Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Application for Standard Government Headstone or

Marker for Installation in a Private or State Veterans' Cemetery; Withdrawal, 59099

Disability Benefits Questionnaires, 59099

VA Loan Electronic Reporting Interface System, 59099–59100

Workers Compensation Programs Office**RULES**

Black Lung Benefits Act:

Coal Miners' and Survivors' Entitlement to Benefits, 59102–59119

Separate Parts In This Issue**Part II**

Labor Department, Workers Compensation Programs Office, 59102–59119

Part III

Health and Human Services Department, Centers for Medicare & Medicaid Services, 59122–59151

Part IV

Presidential Documents, 59153–59160

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR	111.....58989
Proclamations:	49 CFR
9021.....58865	177.....58915
9022.....59155	190.....58897
9023.....59157	192.....58897
Administrative Orders:	193.....58897
Presidential	195.....58897
Determinations:	199.....58897
No. 2013–14 of	392.....58915
September 13,	50 CFR
2013.....58855	17 (2 documents).....58923,
No. 2013–15 of	58938
September 16,	679.....58955
2013.....58859	
No. 2013–16 of	
September 17,	
2013.....58861	
Memorandums:	
Memo. of March 8,	
2011 (Revoked by	
Memo. of September	
20, 2013).....59159	
Memorandum of	
September 20,	
2013.....59159	
7 CFR	
Proposed Rules:	
1217.....58956	
8 CFR	
214.....58867	
14 CFR	
39 (3 documents).....58868,	
58872, 58874	
Proposed Rules:	
39 (9 documents).....58960,	
58962, 58965, 58967, 58970,	
58973, 58975, 58978, 58982	
18 CFR	
Proposed Rules:	
410.....58985	
20 CFR	
718.....59102	
725.....59102	
33 CFR	
100.....58875	
165 (3 documents).....58878,	
58880, 58882	
Proposed Rules:	
143.....58989	
151.....58986	
40 CFR	
52.....58884	
180.....58886	
271.....58890	
272.....58890	
Proposed Rules:	
49.....58987	
271.....58988	
272.....58988	
42 CFR	
Proposed Rules:	
600.....59122	
45 CFR	
Proposed Rules:	
144.....59122	
46 CFR	
Proposed Rules:	
110.....58989	

Presidential Documents

Title 3—

Presidential Determination No. 2013–14 of September 13, 2013

The President

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2014

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, FY 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit and/or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing list is not a reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or illicit drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced, even if a government has carried out the most assiduous narcotics control law enforcement measures.

In addition, the law requires identification of any country on the list that has "failed demonstrably" during the previous 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and take certain counternarcotics measures as cited in section 489(a)(1) of the FAA.

Countries found to have failed demonstrably may receive certain U.S. assistance only if the President determines that provision of such assistance is vital to the national interests of the United States, or if subsequent to the designation, the President determines that the country has made substantial efforts to meet the requirement.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to make substantial efforts to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Included in this report are justifications for the determinations on Bolivia, Burma, and Venezuela, as required by section 706(2)(B) of the FRAA. Explanations for these decisions are published with this determination.

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Burma and Venezuela is vital to the national interests of the United States.

Drug Producing and Trafficking Trends in Strategic Areas

In addition to the listed countries, the following notable drug production and trafficking trends were observed in the preparation of this determination.

Afghanistan

Afghanistan is the world's largest grower of illegal opium poppy and produces approximately 90 percent of the world's illicit opium. Nearly all poppy cultivation occurs in the southern and western parts of the country, especially Helmand Province. Instability in these regions allows criminal

networks, insurgent groups, and illicit cultivation and drug production to thrive.

Most recently, opium production in Afghanistan declined in spite of an increase in the total ground area under poppy cultivation. The drop stemmed primarily from crop disease and poor conditions as some farmers growing illegal crops moved to less hospitable agricultural growing regions. Countering the opium trade remains an uphill struggle and a long-term challenge. Working with Afghan partners, international allies and multilateral organizations, the United States continues to support the commitment to establish effective and sustainable Afghan-led programs that are critical to Afghan security and regional stability.

Afghanistan has continued to take greater responsibility to design and implement its own anti-narcotics programs. The government aggressively eradicated illicit opium poppy during the most recent growing season, as well as carrying out alternative livelihoods and demand reduction policies. To help stem the country's growing domestic drug abuse, the United States has funded a scientifically based survey of urban areas to determine prevalence of use, including among children, and is funding more than 60 in- and out-patient drug treatment centers. The United States supports a wide range of other illegal crop controls, alternative development, drug awareness and treatment projects, including training and treatment service delivery programs implemented through international organizations.

As we approach the 2014 withdrawal of international forces from Afghanistan, the country requires continued international support. Even greater efforts are needed to bring counternarcotics programs into the mainstream of social and economic development strategies to successfully curb illegal drug cultivation and production of opium as well as the high use of opiates among the Afghan population.

The Caribbean

Criminal activity in Caribbean states, as a drug-transit zone for illegal substances, is of deep concern to the United States. United States-bound trafficking in cocaine through the Caribbean dramatically increased from five percent of the total in 2011 to nine percent in 2012. A central response to this threat by the United States and 13 Caribbean partner nations is the Caribbean Basin Security Initiative (CBSI) which is specifically designed to address citizen safety by fostering a wide range of crime prevention programs.

Although the problems are daunting, concrete results are being achieved through the support of CBSI, European organizations, and the Organization of American States (OAS) Inter-American Drug Abuse Control Commission. Through CBSI, some 2,500 Caribbean police officers were trained in the Dominican Republic, a country that has undertaken an aggressive counternarcotics institution building program. Moreover, the United States is training thousands of Caribbean officials elsewhere in the region on fundamental subjects such as crime scene and homicide investigation. CBSI programs are upgrading the ability of Caribbean partners to investigate complex financial crimes, manage forfeited or seized assets, and prosecute criminals. A range of programs are building awareness, upgrading treatment facilities, and fostering the creation of drug courts as alternatives to incarceration for non-violent offenders. The work of a violent crimes task force in St. Kitts and Nevis, mentored by U.S. officials, helped to reduce homicides in St. Kitts and Nevis by 41 percent.

Central America

The seven Central American nations are considered major drug transit countries that significantly affect the United States: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. United States Government analysts estimate that approximately 90 percent of illegal drugs from South America destined for the United States are smuggled through the seven Central American countries and Mexican corridor. Of this amount, nearly

80 percent stops first in a Central American country before onward shipment to Mexico. The Central American Regional Security Initiative (CARSI), initiated in 2008, supports local government efforts to strengthen the rule of law, lower homicide rates, and deny traffickers safe haven.

Under CARSI, U.S.-funded training, equipment, and technical assistance provided to Central America has contributed to concrete success. The model precinct program in El Salvador, for example, has helped reduce the homicide rate by 70 percent in one crime-ridden community. The CARSI-supported program to create transnational anti-gang units is expanding their criminal investigative leads, especially against the MS-13 and M-18 gangs. These criminal gangs have significant drug trafficking and other criminal links in major U.S. cities. Anti-gang units in Central America led to a homicide arrest in Oklahoma City, the prosecution of felony extortions in Annapolis, Maryland, and the capture of one of the FBI's top ten most-wanted fugitives, a suspect who was arrested in El Salvador.

Countries are also strengthening cooperation through the Central American Integrated System (SICA) to promote citizen security and other related programs. Multilateral cooperation to stem the smuggling of essential and precursor chemicals from China used to produce illegal synthetic drugs in Central America is an important component of SICA's mandate. This SICA undertaking is aligned with the growing abuse during the last decade of new psychoactive substances (NPS), the production of which is a growing problem in Central America.

The illegal production of NPS is dependent upon access to a wide range of chemicals. Successful interdictions of unauthorized chemicals in Central America have created the urgent need for effective management and disposal systems. To support the overall effort, U.S. funding in 2013 and 2014 to the OAS Department of Public Security will help provide Central American countries with the development of relevant infrastructure to properly process and destroy these illegally shipped chemicals.

West Africa

Although no West African country is currently listed as a major drug producer or transit zone, the region is a growing concern. The destabilizing effects of increasing drug trafficking in West Africa with direct links to transnational crime organizations based in Latin America pose a direct threat to stability on the African continent. The U.N. Office on Drugs and Crime estimates that cocaine trafficking in West Africa generates approximately \$1.25 billion at wholesale prices in Europe.

African leaders understand that growing criminal enterprises in their countries negatively impact national goals for peace and security. Participants at the 2013 Extraordinary Summit of the Economic Community for West Africa highlighted the need for cooperation to counter drug trafficking in the region. Such efforts by nations in the region are supported by the United States Government's West Africa Cooperative Security Initiative, which will provide some \$50 million in 2013 to combat transnational organized crime. Projects include, for example, anti-corruption training in Sierra Leone, support for a regional law enforcement training center in Ghana, and the development of specially trained counternarcotics law enforcement investigative units.

Drug trafficking in West Africa is of particular concern to Latin America and the United States. Law enforcement investigations show that illegal proceeds generated by criminal activities in African nations flow back to the Western Hemisphere, bolstering trafficking organizations' financial strength and ability to fuel the drug trade in producing and consuming countries, including OAS member states.

You are authorized and directed to submit this determination, with its Bolivia, Burma, and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and publish it in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B', a cursive 'O', and a vertical line through the 'O'.

THE WHITE HOUSE,
Washington, September 13, 2013.

[FR Doc. 2013-23433
Filed 9-24-13; 8:45 am]
Billing code 4710-10

Presidential Documents

Presidential Determination No. 2013–15 of September 16, 2013

Provision of Defense Articles and Services to Vetted Members of the Syrian Opposition for Use in Syria To Prevent the Use or Proliferation of Chemical Weapons and Related Materials, Organizations Implementing U.S. Department of State or U.S. Agency for International Development (USAID) Programs Inside or Related to Syria, and International Organizations for Their Use Inside or Related to Syria

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including sections 40(g) and 40A(b) of the Arms Export Control Act (AECA), I hereby:

- determine that the transaction, encompassing the provision of defense articles and defense services to vetted members of the Syrian opposition; organizations implementing U.S. Department of State or USAID programs inside or related to Syria; and international organizations necessary for the conduct of their operations inside or related to Syria, or to prevent the preparation, use, or proliferation of Syria's chemical weapons, is essential to the national security interests of the United States;
- waive the prohibitions in sections 40 and 40A of the AECA related to such a transaction; and
- delegate to the Secretary of State the responsibility under section 40(g)(2) of the AECA to consult with and submit reports to the Congress for proposed exports, 15 days prior to authorizing them to proceed, that are necessary for and within the scope of this waiver determination and the transaction referred to herein.

You are authorized and directed to publish this determination in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, September 16, 2013.

[FR Doc. 2013-23449
Filed 9-24-13; 8:45 am]
Billing code 4710-10

Presidential Documents

Presidential Determination No. 2013–16 of September 17, 2013

Presidential Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended (the “Act”), I hereby:

Make the determination provided in section 110(d)(1)(A)(i) of the Act, with respect to the Democratic People’s Republic of Korea, the Democratic Republic of the Congo, Equatorial Guinea, Iran, Sudan, and Zimbabwe, not to provide certain funding for those countries’ governments for Fiscal Year (FY) 2014, until such governments comply with the minimum standards or make significant efforts to bring themselves into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Cuba, Eritrea, and Syria not to provide certain funding for those countries’ governments for FY 2014, until such governments comply with the minimum standards or make significant efforts to bring themselves into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Determine, consistent with section 110(d)(4) of the Act, with respect to Algeria, the Central African Republic, People’s Republic of China, Guinea-Bissau, Kuwait, Libya, Mauritania, Papua New Guinea, Russia, Saudi Arabia, Uzbekistan, and Yemen that provision to these countries’ governments of all programs, projects, or activities of assistance described in sections 110(d)(1)(A)(i)–(ii) and 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to the Democratic Republic of the Congo, that assistance and programs described in section 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act, with the exception of foreign military sales and foreign military financing to the army of the Democratic Republic of the Congo, would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Sudan, that assistance and programs described in section 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act, with the exception of foreign military sales and foreign military financing to the Sudanese land forces, air forces, and popular defense force, would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Syria and Eritrea, that a partial waiver to allow funding for educational and cultural exchange programs described in section 110(d)(1)(A)(ii) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Equatorial Guinea, that a partial waiver to allow funding for programs described in section 110(d)(1)(A)(i) of the Act to support programs to study and combat the spread of infectious diseases and to advance sustainable

natural resource management and biodiversity and to support the participation of government employees or officials in young leader exchanges programming would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Syria and Equatorial Guinea, that assistance described in section 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Zimbabwe, that a partial waiver to allow funding for programs described in section 110(d)(1)(A)(i) of the Act for assistance for victims of trafficking in persons or to combat such trafficking, and for programs to support the promotion of health, good governance, education, leadership, agriculture and food security, poverty reduction, livelihoods, family planning, and macroeconomic growth including anti-corruption, and programs that would have a significant adverse effect on vulnerable populations if suspended, would promote the purposes of the Act or is otherwise in the national interest of the United States;

And determine, consistent with section 110(d)(4) of the Act, with respect to Zimbabwe, that assistance described in section 110(d)(1)(B) of the Act, which:

(1) is a regional program, project, or activity under which the total benefit to Zimbabwe does not exceed 10 percent of the total value of such program, project, or activity;

(2) has as its primary objective the addressing of basic human needs, as defined by the Department of the Treasury with respect to other, existing legislative mandates concerning U.S. participation in the multilateral development banks;

(3) is complementary to or has similar policy objectives to programs being implemented bilaterally by the United States Government;

(4) has as its primary objective the improvement of Zimbabwe's legal system, including in areas that impact Zimbabwe's ability to investigate and prosecute trafficking cases or otherwise improve implementation of its anti-trafficking policy, regulations, or legislation;

(5) is engaging a government, international organization, or civil society organization, and seeks as its primary objective(s) to: (a) increase efforts to investigate and prosecute trafficking in persons crimes; (b) increase protection for victims of trafficking through better screening, identification, rescue and removal, aftercare (shelter, counseling), training, and reintegration; or (c) expand prevention efforts through education and awareness campaigns highlighting the dangers of trafficking in persons or training and economic empowerment of populations clearly at risk of falling victim to trafficking; or

(6) is targeted macroeconomic assistance from the International Monetary Fund that strengthens the macroeconomic management capacity of Zimbabwe; would promote the purposes of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress, and to publish it in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, September 17, 2013.

[FR Doc. 2013-23463
Filed 9-24-13; 8:45 am]
Billing code 4710-10

Presidential Documents

Proclamation 9021 of September 19, 2013

National POW/MIA Recognition Day, 2013

By the President of the United States of America

A Proclamation

Our country endures because in every generation, courageous Americans answer the call to serve in our Armed Forces. They represent the very best of the human spirit, stand tall for the values and freedoms we cherish, and uphold peace and security at home and around the globe. Today, we pay tribute to the service members who have not returned from the battlefield, we stand beside their families, and we honor those who are held captive as prisoners of war. We will never forget their sacrifice, nor will we ever abandon our responsibility to do everything in our power to bring them home.

America remains steadfast in our determination to recover our missing patriots. Our work is not finished until our heroes are returned safely to our shores or a full accounting is provided to their loved ones. We must care for the men and women who have served so selflessly in our name, and we must carry forward the legacy of those whose fates are still unknown. Today, and every day, we express our profound appreciation to our service members, our veterans, our military families, and all those who placed themselves in harm's way to sustain the virtues that are the hallmarks of our Union.

On September 20, 2013, the stark black and white banner symbolizing America's Missing in Action and Prisoners of War will be flown over the White House; the United States Capitol; the Departments of State, Defense, and Veterans Affairs; the Selective Service System Headquarters; the World War II Memorial; the Korean War Veterans Memorial; the Vietnam Veterans Memorial; United States post offices; national cemeteries; and other locations across our country. We raise this flag as a solemn reminder of our obligation to always remember the sacrifices made to defend our Nation.

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 20, 2013, as National POW/MIA Recognition Day. I urge all Americans to observe this day of honor and remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. 2013-23467
Filed 9-24-13; 8:45 am]
Billing code 3295-F3

Rules and Regulations

Federal Register

Vol. 78, No. 186

Wednesday, September 25, 2013

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

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

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2537-13; DHS Docket No. USCIS-2012-0010]

RIN 1615-ZB23

Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2014

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notification of numerical limitation.

SUMMARY: The Secretary of Homeland Security announces that the annual fiscal year numerical limitation for Commonwealth of the Northern Mariana Islands (CNMI)-only Transitional Worker (CW-1) nonimmigrant classification for fiscal year (FY) 2014 is set at 14,000. In accordance with Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) (codified, in relevant part, at 48 U.S.C. 1806(d)) and 8 CFR 214.2(w)(1)(viii)(C), this document announces the mandated annual reduction of the CW-1 numerical limit and provides the public with information regarding the new CW-1 numerical limit. This document is intended to ensure that CNMI employers and employees have sufficient notice regarding the maximum number of workers who may be granted transitional worker status during the upcoming fiscal year.

DATES: *Effective Date:* September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529-

2060. Contact telephone (202) 272-1470.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) extends U.S. immigration law to the CNMI and provides CNMI-specific provisions affecting foreign workers. *See* Public Law 110-229, 122 Stat. 754, 853. The CNRA included provisions for a “transition period” to phase-out the CNMI’s nonresident contract worker program and phase-in the U.S. federal immigration system in a manner that minimizes the adverse economic and fiscal effects and maximizes the CNMI’s potential for future economic and business growth. *See* sec. 701(b) of the CNRA. The CNRA authorized DHS to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period, which ends December 31, 2014.¹ *See id.*; 48 U.S.C. 1806(d)(2). The CNRA also mandated an annual reduction in the allocation of the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. 48 U.S.C. 1806(d)(2).

Consistent with this mandate under the CNRA, DHS published a final rule on September 7, 2011 amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW-1 for principal workers and CW-2 for spouses and minor children). *See* Commonwealth of the Northern Mariana Islands Transitional Worker Classification, 76 FR 55502 (Sept. 7, 2011). DHS established the CW-1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. *See* 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS opted to publish any future annual numerical limitations by **Federal Register** notice. *See* 8 CFR

¹ The Secretary of Labor is authorized to extend the transitional worker program beyond December 31, 2014 for up to five years. *See* 48 U.S.C. 1806(d)(5). An extension decision must be made no later than 180 days before the expiration of the transition period on December 31, 2014, i.e., no later than July 7, 2014 (the first business day after the date that is 180 days before the end of the transition date, Friday, July 4, 2014). The Secretary of Labor has not made an extension decision as of the date of this Notice.

214.2(w)(1)(viii)(C). Instead of developing a numerical limit reduction plan, DHS determined that it would assess the CNMI’s workforce needs on a yearly basis. *Id.* This initial approach to the allocation system ensured that employers had an adequate supply of workers to provide a smooth transition into the federal immigration system. It also provided DHS with the flexibility to adjust to the future needs of the CNMI economy and to assess the total alien workforce needs based on the number of requests for transitional worker nonimmigrant classification received following implementation of the CW-1 nonimmigrant classification.

DHS followed this same rationale for the FY 2013 annual fiscal year numerical limitation. After assessing all workforce needs, including the opportunity for growth, DHS set the CW-1 numerical limitation at 15,000. CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012). The FY 2013 numerical limitation was based on the actual demonstrated need for foreign workers within the CNMI during FY 2012. *See id.*

II. Maximum CW-1 Nonimmigrant Workers for Fiscal Year 2014

The maximum number of CW-1 nonimmigrant workers announced in this document (14,000) is appropriate based on the actual demonstrated need for foreign workers within the CNMI. As of August 13, 2013, in FY 2013, employers in the CNMI filed 4,791 petitions for CNMI-Only Nonimmigrant Transitional Workers, Form I-129 CW, requesting a total of 7,323 nonimmigrant transitional workers during FY 2013.² DHS continues to believe that the number of requested CW-1 nonimmigrant workers in the previous fiscal year provides an accurate assessment to use in determining the likely demand in FY 2014. In doing so, DHS also takes into account the number of CW-1 requests received in FY 2013. To date, most of the CW-1 petitions received in FY 2013 are extensions of CW-1 nonimmigrant status. DHS anticipates that this trend will continue; employers who petitioned for initial

² USCIS Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB), figures provided as of August 13, 2013. This data includes petitions for initial status and for extensions of status.

CW-1 nonimmigrant status are likely to seek to renew that status. It is important to note that the approvals for initial CW-1 nonimmigrant workers were staggered throughout FY 2012.

Therefore, the need to file extensions for these workers will also be spread out throughout 2013. Most CW-1 beneficiaries still have valid CW-1 nonimmigrant status until late summer of 2013. Some employers may not have to file for their CW-1 nonimmigrant workers, to the extent that they plan to extend, until later in the year. As a result, USCIS has not yet received the total projected number of CW-1 extensions for the 12,247 initial CW-1 nonimmigrant workers granted in FY 2012. In short, DHS anticipates that the majority of the CW-1 employers will request renewal for their CW-1 workers' nonimmigrant statuses later in the year. These requests, to the extent they are granted, will be counted under the FY 2013 cap.

The CNRA requires an annual reduction in the number of transitional workers (and complete elimination of the CW nonimmigrant classification by the end of the transition period) but does not mandate a specific reduction. 48 U.S.C. 1806(d)(2). In addition, 8 CFR 214.2(w)(1)(viii)(C) provides that the numerical limitation for any fiscal year will be less than the number established for the previous fiscal year, and it will be reasonably calculated to reduce the number of CW-1 nonimmigrant workers to zero by the end of the transition period.

To comply with these requirements, meet the CNMI's labor market's needs, provide opportunity for growth, and preserve access to foreign labor, DHS has set the numerical limitation for FY 2014 at 14,000. DHS arrived at this figure by taking the number of CW-1 nonimmigrant workers needed based on the FY 2013 limitation of 15,000, and then reducing it by 1,000, or approximately 6.7 percent. This number will accommodate the staggered extensions for the 12,247 initial CW-1 nonimmigrant workers granted during FY 2012 (to the extent that the employer requests an extension) and will also accommodate possible economic growth that might lead to a need for additional nonimmigrant workers during FY 2014.

In setting this new number, DHS also considered the effect of the FY 2014 numerical limitation on an extension of the transitional worker program, if any. To date, the Department of Labor (DOL) has not announced a decision on the extension of the program. However, DHS must prepare for both the end of the transitional worker program and for an extension of the transitional worker

program; a drastic reduction would not account for the possibility of an extension. DHS must ensure that the numerical limitation is reduced as statutorily mandated, but that it still provides for enough CW-1s for future fiscal years if the transitional worker program is extended. DHS thus believes that a reduction of only 6.7 percent or 1,000 is appropriate because the new baseline must preserve access to foreign labor, as well as accommodate future reductions, if the DOL extends the transitional worker program. Accordingly, DHS reduced the number of transitional workers from the current fiscal year numerical limitation of 15,000, and established the maximum number of CW-1 nonimmigrant visas available for FY 2014 at 14,000.

This number of CW-1 nonimmigrant workers will be available beginning on October 1, 2013. DHS may adjust the numerical limitation for a fiscal year or other period, in its discretion, at any time via notice in the **Federal Register**. 8 CFR 214.2(w)(1)(viii)(D). Consistent with the rules applicable to other nonimmigrant worker visa classifications, if the numerical limitation for the fiscal year is not reached, the unused numbers do not carry over to the next fiscal year. 8 CFR 214.2(w)(1)(viii)(E).

Petitions requesting a start date within fiscal year 2014 will be counted against the 14,000 limit. As such, each CW-1 nonimmigrant worker who is listed on a Form I-129 CW is counted against the numerical limitation at the time USCIS receives the petition. Counting the petitions in this manner will help ensure that USCIS does not approve requests for more than 14,000 CW-1 nonimmigrant workers. If the number of CW-1 nonimmigrant workers approaches the 14,000 limit, USCIS will hold any subsequently-filed petition until a final determination is made on the petitions that are already included in the numerical count. Subsequently-filed petitions will be forwarded for adjudication in the order in which they were received until USCIS has approved petitions for the maximum number of CW-1 nonimmigrant workers; any remaining petitions that were held or that are newly received will be rejected.

This document does not affect the immigration status of aliens who hold CW-1 nonimmigrant status. Aliens currently holding such status, however, will be affected by this document when they apply for an extension of their CW-1 nonimmigrant classification, or a change of status from another nonimmigrant status to that of CW-1 nonimmigrant status.

This document does not affect the status of any alien currently holding CW-2 nonimmigrant status as the spouse or minor child of a CW-1 nonimmigrant worker. This document also does not directly affect the ability of any alien to extend or otherwise obtain CW-2 status, as the numerical limitation applies to CW-1 principals only. Aliens seeking CW-2 status may, however, be indirectly affected by the applicability of the cap to the CW-1 principals from whom their status is derived.

Rand Beers,

Acting Secretary.

[FR Doc. 2013-23289 Filed 9-24-13; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0146; Directorate Identifier 2012-SW-060-AD; Amendment 39-17559; AD 2013-16-21]

RIN 2120-AA64

Airworthiness Directives; Agusta S.p.A. (Type Certificate Currently Held by Agusta Westland S.p.A) (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an airworthiness directive (AD) for Agusta Model A109E helicopters that required reducing the tail rotor (T/R) blade life limit, modifying a T/R hub and grip assembly, re-identifying two T/R assemblies, clarifying the never-exceed speed (Vne) limitation, and reducing the inspection interval. Since we issued that AD, the manufacturer has redesigned a T/R grip bushing (bushing) that reduces the loads, which caused the T/R cracking, on the T/R blades. This action requires installing the new bushing and re-identifying the T/R hub-and-grip and hub-and-blade assemblies and requires a recurring inspection of each bushing. These actions are intended to prevent fatigue failure of a T/R blade and subsequent loss of control of the helicopter.

DATES: This AD is effective October 30, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of October 30, 2013.

ADDRESSES: For service information identified in this AD, contact Agusta

Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39-0331-711133; fax 39-0331-711180; or at <http://www.agustawestland.com/technical-bullettins>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800-647-5527) is U.S. Department of Transportation, Docket Operations Office, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

On February 25, 2013, at 78 FR 12651, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to supersede AD 2002-25-51, Amendment 39-13060 (68 FR 9504, February 28, 2003), which required for Agusta Model A109E helicopters reducing the tail rotor (T/R) blade life limit, modifying a T/R hub and grip assembly, re-identifying two T/R assemblies, clarifying the never-exceed speed (Vne) limitation, and reducing the inspection interval.

The NPRM was prompted by AD No. 2007-0010, dated January 31, 2007, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD No. 2007-0010 to correct an unsafe condition for the Agusta Model A109E. EASA advises that Agusta has designed a new bushing that when installed on the T/R grip assembly reduces the loads acting upon the T/R blades. EASA

further advises that following installation of the re-designed bushing, the inspection interval of the T/R blade bushing may be extended from 150 flight hours to 200 flight hours. Accordingly, the NPRM proposed to require:

- Before each start of the helicopter engines, visually checking both sides of each T/R blade for a crack. An owner/operator (pilot) may perform this check and must enter compliance into the aircraft records in accordance with 14 CFR 43.9 (a)(1)-(4) and 14 CFR 91.417(a)(2)(v). A pilot may perform this check because it involves only a visual check for a crack and can be performed equally well by a pilot or a mechanic. This procedure is an exception to our standard maintenance regulations.

- For helicopters with T/R hub and blade assembly, part number (P/N) 109-8131-02-151, before further flight, modifying each T/R hub and blade assembly by installing a new bushing in each grip assembly and two zero-hours time-in-service (TIS) T/R blades; and re-identifying the hub and grip assembly and the T/R hub and blade assembly with different P/Ns.

- For helicopters with T/R hub and blade assembly, P/N 109-8131-02-157, within 25 hours TIS and thereafter at intervals not to exceed 25 hours TIS, and before further flight any time there is an increase in vibration levels, using a 5x or higher power magnifying glass, visually inspecting each T/R blade for a crack.

- On or before accumulating 200 hours TIS on the T/R hub and grip assembly, and thereafter at intervals not to exceed 200 hours TIS, inspecting the linings and measuring the internal diameter of the bushings. If the internal diameter of the bushing exceeds 41.35 millimeters, replacing the bushing.

- If there is a crack, before further flight, replacing the T/R blade.

- Revising the Airworthiness Limitations section of the maintenance manual to reflect that a T/R blade, P/N 109-8132-01-111, which has not been operated as part of T/R hub and blade assembly, P/N 109-8131-02-151, has a retirement life of 1,000 hours TIS.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 12651, February 25, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral

agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

We reviewed Alert Bollettino Tecnico No. 109EP-30, Revision C, dated September 29, 2006, which describes procedures for checking/inspecting for cracks on both the upper and lower surfaces of T/R blades, P/N 109-8132-01-111; replacing each bushing, P/N 109-0132-55 and spacer P/N 109-0132-13, with bushing, P/N 109-8131-30-109, and instituting a recurring inspection of each bushing; and cancelling the V_{NE} limitations when the newly-designed bushing is installed on each T/R grip assembly, P/N 109-8131-29-101, a "new" pair of T/R blades, P/N 109-8132-01-111, is installed, and the T/R hub-and-grip and hub-and-blade assemblies are re-identified.

Costs of Compliance

We estimate that this AD will affect 75 helicopters of U.S. Registry. Based on an average labor rate of \$85 per hour, we estimate that operators will incur the following costs in order to comply with this AD:

- Visually inspecting the T/R blades requires about 0.5 work hours for a cost per helicopter of \$43 and a total cost to U.S. operators of \$3,225 per inspection cycle.

- Replacing a cracked T/R blade requires about 2 work hours, and required parts cost about \$25,320, for a total cost per helicopter of \$25,490.

- Modifying the hub assembly with new T/R blades and bushings requires about 16 work hours, and required parts would cost about \$58,690, for a total cost per helicopter of \$60,050.

- Inspecting the T/R bushings requires about 7 work hours, for a cost per helicopter of \$595 and a total cost to U.S. operators of \$44,625 per inspection cycle.

- Revising the Airworthiness Limitations section of the maintenance manual requires about .25 work hour, for a cost per helicopter of \$22 and a total cost to U.S. operators of \$1,650.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002-25-51, Amendment 39-13060 (68 FR 9504, February 28, 2003), and adding the following new AD:

2013-16-21 AGUSTA S.p.A. (Agusta):
Amendment 39-17559; Docket No. FAA-2013-0146; Directorate Identifier 2012-SW-060-AD.

(a) Applicability

This AD applies to Agusta Model 109E helicopters with tail rotor (T/R) hub and blade assembly, part number (P/N) 109-8131-02-151 and P/N 109-8131-02-157, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a fatigue crack in a T/R blade. This condition could result in failure of the T/R blade and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2002-25-51, Docket No. 2002-SW-55-AD, Amendment 39-13060 (68 FR 9504, February 28, 2003).

(d) Effective Date

This AD becomes effective October 30, 2013.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Before each start of the helicopter engines, visually check both sides of each T/R blade for a crack in the inspection area depicted in Figure 1 to paragraph (f)(1) of this AD. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)-(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

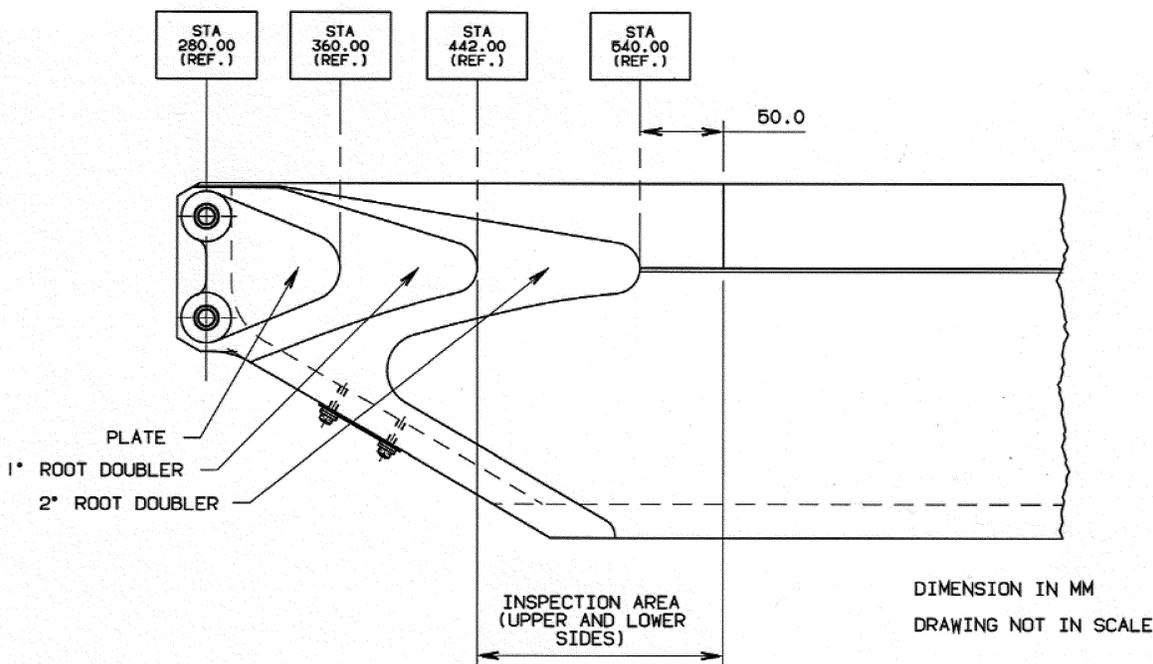


Figure 1 to Paragraph (f)(1), T/R Blade, P/N 109-8132-01-111

(2) For helicopters with T/R hub and blade assembly, P/N 109-8131-02-151 (consisting of two T/R blades, P/N 109-8132-01-111, and one T/R hub and grip assembly, P/N 109-8131-02-127), before further flight, modify each T/R hub and blade assembly by installing a new bushing, P/N 109-8131-30-109, in each grip assembly and two zero-hour time-in-service (TIS) T/R blades, P/N 109-8132-01-111; re-identifying the hub and grip assembly as P/N 109-8131-02-159; and re-identifying the T/R hub and blade assembly as P/N 109-8131-02-157 in accordance with the Compliance Instructions, Part V, paragraphs 2. through 13., of Agusta Bollettino Tecnico No. 109EP-30, Revision C, dated September 29, 2006 (BT). A T/R blade, P/N 109-8132-01-111, which has been operated as part of T/R hub and blade assembly, P/N 109-8131-02-151, must be retired regardless of TIS and may not be used as part of the T/R hub and blade assembly, P/N 109-8131-02-157. Returning the removed T/R blades, grips, or bushings to Agusta is not required.

(3) For helicopters with T/R hub and blade assembly, P/N 109-8131-02-157 (consisting of two T/R blades, P/N 109-8132-01-111, and one T/R hub and grip assembly, P/N 109-8131-02-159), within 25 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, and before further flight any time there is an increase in vibration levels, using a 5x or higher power magnifying glass, visually inspect each T/R blade for a crack in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5. of the BT. Reporting to Agusta is not required.

(4) On or before accumulating 200 hours TIS on the T/R hub and grip assembly, P/N 109-8131-02-159, and thereafter at intervals

not to exceed 200 hours TIS, inspect the linings and measure the internal diameter of the bushings, P/N 109-8131-30-109, by referring to Figure 2 of the BT. If the internal diameter of the bushing exceeds 41.35 millimeters, replace the bushing.

(5) If there is a crack in a T/R blade, before further flight, replace the cracked T/R blade.

(6) Revise the Airworthiness Limitations section of the maintenance manual to reflect that a T/R blade, P/N 109-8132-01-111, which has not been operated as part of T/R hub and blade assembly, P/N 109-8131-02-151, has retirement life of 1,000 hours TIS.

(g) Special Flight Permits

Special flight permits will not be issued.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas, 76137; telephone (817) 222-5110; email sharon.y.miles@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2007-0010, dated January 31, 2007. You

may view a copy of the EASA AD on the Internet at <http://www.regulations.gov> in Docket No. FAA-2013-0146.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

(k) Material Incorporated by Reference

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

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

(i) Agusta Bollettino Tecnico No. 109EP-30, Revision C, dated September 29, 2006, excluding Figure 1.

(ii) Reserved.

(3) For Agusta service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39-0331-711133; fax 39-0331-711180; or at <http://www.agustawestland.com/technical-bulletins>.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may also 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 Fort Worth, Texas, on August 2, 2013.

Lance T. Gant,

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

[FR Doc. 2013-23017 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0823; Directorate Identifier 2013-CE-027-AD; Amendment 39-17594; AD 2013-19-12]

RIN 2120-AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for GA 8 Airvan (Pty) Ltd Models GA8 and GA8-TC320 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the fuel system integral sump tank does not meet FAA regulations. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 15, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 15, 2013.

We must receive comments on this AD by November 12, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; Internet: <http://www.gippsaero.com/customer-support/technical-publications.aspx>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, has issued AD No. AD/GA8/7, dated September 2, 2013 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

The GippsAero GA8 and GA8-TC 320 aircraft Mk II fuel system features an integral sump tank located in the floor structure forward of the co-pilot seat. The current configuration of the compartments adjacent to the Mk II sump tank do not meet the requirements of regulation 23.967(b) of the Federal Aviation Regulations of the United States of America in that they are not suitably ventilated and drained to prevent the accumulation of flammable fluids or vapours.

This AD requires modifying the fuel system for ventilation and drainage. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2013-0823.

Relevant Service Information

GippsAero has issued Mandatory Service Bulletin SB-GA8-2012-96, Issue 4, dated August 12, 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 the integral sump tank in the fuel system is not suitably ventilated and drained to prevent the accumulation of flammable fluids or vapors, which could lead to a flammability issue. 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 fewer 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-2013-0823; Directorate Identifier 2013-CE-027-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 will affect 35 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to do the fuel system ventilation and drainage modification requirement of this AD. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be \$8,925, or \$255 per product.

In addition, we estimate that it will take about 4 work-hours per product to do the cargo pod modification. The average labor rate is \$85 per work-hour. Required parts would cost about \$1,000 per product, for a cost of \$1,340 per product. We have no way of determining the number of products that may need this action.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013-19-12 GA 8 Airvan (Pty) Ltd:
Amendment 39-17594; Docket No. FAA-2013-0823; Directorate Identifier 2013-CE-027-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 15, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following GA 8 Airvan (Pty) Ltd model and serial number airplane presented in paragraphs (c)(1) and (c)(2) that are certificated in any category:

(1) Models GA8 airplanes, serial numbers GA8-02-012, GA8-TC 320-02-16, GA8-TC 320-03-25, and GA8-TC 320-09-120.

(2) Models GA8 and GA8-TC320, serial numbers GA8-08-128 through GA8A/GA8-TC 320-13-205. The last three digits (third tier designation) of the serial numbers are sequential regardless of the model designation (first tier designation) or the year produced (second tier designation).

(d) Subject

Air Transport Association of America (ATA) Code 21: Fuel System.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the fuel system integral sump tank does not meet

FAA regulations. We are issuing this AD to prevent the accumulation of flammable fluids or vapors, which could lead to a flammability issue.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD.

(1) *For all affected airplanes:* Within the next 100 hours time-in-service (TIS) after October 15, 2013 (the effective date of this AD) or within 3 months after October 15, 2013 (the effective date of this AD), whichever occurs first, modify the airplane following Part 1 of GippsAero Mandatory Service Bulletin SB-GA8-2012-96, Issue 4, dated August 12, 2013.

(2) *For affected airplanes equipped with a cargo pod part number GA8-255004-017 or GA8-255004-019:* Before further flight after the modification required in paragraph (f)(1) of this AD, modify the cargo pod following Part 2 of GippsAero Mandatory Service Bulletin SB-GA8-2012-96, Issue 4, dated August 12, 2013.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority AD No. AD/GA8/7, dated September 2, 2013, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2013-0823.

(i) 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) GippsAero Mandatory Service Bulletin SB-GA8-2012-96, Issue 4, dated August 12, 2013.

(ii) Reserved.

(3) For GippsAero service information identified in this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; Internet: <http://www.gippsaero.com/customer-support/technical-publications.aspx>.

(4) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

(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 Kansas City, Missouri, on September 16, 2013.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-22978 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0610; Directorate Identifier 2013-CE-017-AD; Amendment 39-17592; AD 2013-19-10]

RIN 2120-AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for PILATUS AIRCRAFT LTD. Model PC-12/47E airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as common grounding of both the pilot primary flight display (PFD) and the Electronic Standby Instrument System (ESIS). If the common ground fails both navigations systems could fail simultaneously, which could result in loss of control. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 30, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 30, 2013.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Service Manager, CH-6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: <http://www.pilatus-aircraft.com/#32>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 17, 2013 (78 FR 42723). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a design review of the electrical supply of navigation equipment installed on certain PC 12/47E aeroplanes, common grounding of the pilot Primary Flight Display (PFD) and the Electronic Standby Instrument System (ESIS) was identified.

This condition, if not corrected, could lead, in case of failure of PFD and ESIS common ground, to simultaneous loss of more than one pilot flight information display and inhibition of flight parameter presentation, possibly resulting in reduced ability to control the aeroplane.

To address this potentially unsafe condition, Pilatus Aircraft Ltd. introduced a modification in production to relocate the ESIS ground connection. This modification is available for affected in-service aeroplanes through Pilatus Aircraft Ltd Service Bulletin (SB) No 34-038.

For the reasons described above, this AD requires relocation of the ESIS ground connection. The MCAI can be found in the AD docket on the Internet

at <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0610-0002>.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 42723, July 17, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 42723, July 17, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 42723, July 17, 2013).

Costs of Compliance

We estimate that this AD will affect 230 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$40 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be \$106,950, or \$465 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska, 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.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013-19-10 PILATUS AIRCRAFT LTD.:
Amendment 39-17592; Docket No. FAA-2013-0610; Directorate Identifier 2013-CE-017-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 30, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS AIRCRAFT LTD. Model PC-12/47E airplanes, serial numbers 545 and 1001 through 1450, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 34: Navigation.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as common grounding of both the pilot primary flight display (PFD) and the Electronic Standby Instrument System (ESIS). If the common ground fails both navigation systems could fail simultaneously. We are issuing this AD to prevent simultaneous failure of both navigation systems, which could result in loss of control.

(f) Actions and Compliance

Unless already done, within 3 months after October 30, 2013 (the effective date of this AD), modify the ESIS return wire ground connections following the accomplishment instructions in PILATUS AIRCRAFT LTD. PC-12 Service Bulletin No. 34-038, dated March 26, 2013.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013-0114, dated May 28, 2013, for related information, which can be found in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0610-0002>.

(i) Material Incorporated by Reference

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

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

(i) PILATUS AIRCRAFT LTD. PC-12 Service Bulletin No. 34-038, dated March 26, 2013.

(ii) Reserved.

(3) For PILATUS AIRCRAFT LTD. service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Service Manager, CH-6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 01; fax: +41 (0) 41 619 65 76; Internet: <http://www.pilatus-aircraft.com/#32>.

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

(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 Kansas City, Missouri, on September 16, 2013.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-22980 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2013-0839]

RIN 1625-AA08

Special Local Regulation; Frogtown Race Regatta; Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Special Local Regulation on the Maumee River, Toledo, Ohio. This Special Local Regulation is necessary to protect race participants from other vessel traffic. This temporary Special Local Regulation is intended to restrict vessels from a portion of the Maumee River during the annual Frogtown Race Regatta.

DATES: This rule is effective from 5 a.m. until 7 p.m. on September 28, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2013-0839. To view documents mentioned in this preamble as being available in the

docket, go to <http://www.regulations.gov>, inserting USCG–2013–0839 in the “Keyword” box, and then clicking “search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, contact or email MST1 Ian M. Fallon, U.S. Coast Guard Marine Safety Unit Toledo, at (419) 418–6036 or Ian.M.Fallon@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. Additional details regarding emergent event were received after the annual permitting process but not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the hazards associated with the event.

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

B. Basis and Purpose

On Saturday, September 28, 2013, from 5 a.m. to 7 p.m. an organized racing event will take place on the Maumee River in which participants rowing shell boats from the Norfolk and Southern Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16 on the Maumee River in Toledo, OH. The Captain of the Port Detroit has determined that this boat race, which is in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property, including potential collisions, allisions, and individuals falling in the water. Establishing a special local regulated area is necessary to protect persons and property at these events and help minimize the associated risks.

C. Discussion of Rule

This rule will be effective and enforced 5 a.m. until 7 p.m. on September 28, 2013. The Coast Guard requires that all vessels transiting the area proceed at a no-wake speed and maintain extra vigilance at all times.

Vessel traffic may proceed down the West side of the river at a no wake speed during racing. The races will stop for oncoming freighter or commercial traffic. The on-scene representative or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state or local law enforcement vessel assigned to patrol the event.

This temporary Special Local Regulation will encompass all U.S. waters on the Maumee River, Toledo, OH from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16.

The Captain of the Port will notify the affected segments of the public of the enforcement of this Special Local Regulation by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

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 temporary final 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 that Order. We conclude that this temporary final rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The temporary Special Local Regulation will be relatively small and be enforced for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

This temporary final rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the portion of the Maumee River discussed above from 5 a.m. until 7 p.m. on September 28, 2012.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this 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** section 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 temporary final rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade and therefore is categorically excluded under figure 2-1, paragraph (34)(h), of the Instruction. During the annual permitting process for this boat racing event an environmental analysis was conducted to include the effects of this special local regulation.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.T09-0839 to read as follows:

§ 100.T09-0839 Special Local Regulation, Frogtown Race Regatta, Toledo, OH.

(a) *Location.* The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH, from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16.

(b) *Effective and enforcement period.* This section will be effective and enforced from 5 a.m. until 7 p.m. on September 28, 2013.

(c) *Regulations.* (1) Consistent with § 100.901 of this part, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant at all times. Additionally, vessels within the regulated area must yield right-of-way for event participants and event safety craft. Commercial vessels will have right-of-way over event participants, and event safety craft.

(2) The "on-scene representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The on-scene representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16.

(3) Vessel operators entering or operating in the special local regulated area must comply with all directions given to them by the Captain of the Port, Sector Detroit or his on-scene representative.

Dated: September 13, 2013.

J.E. Ogden,

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

[FR Doc. 2013-23286 Filed 9-24-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2013–0786]

RIN 1625–AA00

Safety Zone; San Diego Shark Fest Swim; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable waters of the San Diego Bay, San Diego, CA, in support of San Diego Shark Fest Swim. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 9:15 a.m. to 10:15 a.m. on October 6, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0786]. 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 Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7656, email d11marineeventssandiego@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:**Table of Acronyms**

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical details of the San Diego Shark Fest Swim were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impractical and contrary to the public interest. The Coast Guard did not have the necessary event information in time to provide both a comment period and allow for a 30 day delayed effective date. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C 1221 et seq.). The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay for the October 6, 2013 San Diego Shark Fest Swim, consisting of 400 swimmers swimming a predetermined course. The sponsor will provide 18 safety vessels including boats, paddle boards, and PWCs for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 9:15 a.m. to 10:15 a.m. on October 6, 2013. The limits of the safety zone will be the navigable waters of the San Diego Bay bounded by the following coordinates: 32°42.17' N, 117°09.83' W; 32°41.66' N, 117°09.88' W; along the

shore line to 32°41.29' N, 117°09.77' W; 32°41.50' N, 117°09.73' W; 32°42.05' N, 117°09.68' W; along the shore line to 32°42.17' N, 117°09.83' W.

This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the San Diego Shark Fest Swim. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone. Immediately before and during the swim event, Coast Guard Sector San Diego Joint Harbor Operations Center will issue Broadcast Notice to Mariners on the location and enforcement of the safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may be allowed to transit through the designated safety zone during the specified times if they request and obtain authorization from the Captain of the Port, or his designated representative. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the aforementioned portion of the San Diego Bay from October 6, 2013, from 9:15 a.m. to 10:15 a.m.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will only be in effect for one hour in the morning when vessel traffic is low. Vessel traffic can transit safely around the zone when authorized.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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 safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–595 to read as follows:

§ 165.T11-595 Safety Zone; San Diego Shark Fest Swim; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone will be the navigable waters of the San Diego Bay bounded by the following coordinates: 32°42.17' N, 117°09.83' W; 32°41.66' N, 117°09.88' W; along the shore line to 32°41.29' N, 117°09.77' W; 32°41.50' N, 117°09.73' W; 32°42.05' N, 117°09.68' W; along the shore line to 32°42.17' N, 117°09.83' W.

(b) *Enforcement Period.* This section will be enforced from 9:15 a.m. to 10:15 a.m. on October 6, 2013. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.*

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

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

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

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

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

Dated: September 6, 2013.

S.M. Mahoney,

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

[FR Doc. 2013-23264 Filed 9-24-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0840]

RIN 1625-AA00

Safety Zone; Catawba Island Club Wedding Event, Catawba Island Club, Catawba Island, OH

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zone in the waters of Lake Erie in the vicinity of Port Clinton, OH. This temporary safety zone is necessary to protect people and vessels from the hazards associated with this event. This zone is intended to restrict vessels from a portion of Lake Erie during the fireworks event at Catawba Island.

DATES: This rule will be effective and enforced from 7:50 p.m. until 8:30 p.m. on October 5, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2013-0840 and are available online by going to www.regulations.gov, inserting USCG-2013-0840 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, contact or email MST1 Ian M. Fallon, U.S. Coast Guard Marine Safety Unit Toledo, at (419) 418-6036 or Ian.M.Fallon@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The details of this emergent event were not received in sufficient time for the Coast Guard to solicit public comments before the start of the fireworks. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the hazards associated with the maritime fireworks displays.

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

B. Basis and Purpose

A fireworks display will be taking place on Lake Erie in the vicinity of Port Clinton, OH. The temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone to control vessel movement around the location of the event will help ensure the safety of persons and property at this event and help minimize the associated risks such as accidental detonations, projectiles, and falling debris.

C. Discussion of Rule

The temporary safety zone will encompass all U.S. navigable waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°34'18.10" N, 082°51'18.70" W, North American Datum 1983 (NAD83).

Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. All persons and vessels shall comply with the instructions of the Coast Guard

Captain of the Port or the on-scene representative.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize their impact on navigable waters. Furthermore, restrictions on vessel movement within the area of the safety zone expected to be minimal. Under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in designated portions of Sandusky Bay, OH from 7:50 p.m. through 8:30 p.m. on October 5, 2013.

The safety zone will not have a significant economic impact on a

substantial number of small entities for the following reasons: The safety zone will be activated, and thus subject to enforcement, for only a short period of time. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, 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 safety zone less than a week in duration. Therefore, it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction and a CED and checklist are not required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09-0840 to read as follows:

§ 165.T09-0840 Safety Zone; Catawba Island Club Wedding Event, Catawba Island Club, Catawba Island, OH.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of Lake Erie within a 250-yard radius of the fireworks launch site located at position 41°34'18.10" N, 082°51'18.70" W, North American Datum 1983 (NAD83).

(b) *Effective and enforcement period.* The safety zone will be effective and enforced from 7:50 p.m. until 8:30 p.m. on October 5, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within these safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9464. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Detroit, or his on-scene representative.

Dated: September 13, 2013.

J.E. Ogden,

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

[FR Doc. 2013-23278 Filed 9-24-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-1069]

RIN 1625-AA00

Safety Zone; Chelsea River, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is disestablishing the existing regulation for the Safety Zone: Chelsea River, Boston Inner Harbor, Boston, MA. Since the implementation of the regulation, physical changes have occurred within the confines of the safety zone, making the safety zone unnecessary.

DATES: This rule is effective on October 25, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-1069. 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 the 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 Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, email Mark.E.Cutter@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On Wednesday, August 7, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (78 FR 48085). We received one comment on the NPRM supporting the proposed action. Previously, on Thursday, January 31, 2013 the Coast Guard published an Advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (78 FR 6782). There were 3 formal written comments received. There were two public meetings held in which verbal comments were received. The minutes of these public meetings are available in the docket.

B. Basis and Purpose

The legal bases for this rule are 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, and 160.5; Public Law 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

The original Chelsea Street Bridge was a bascule-type bridge owned by the City of Boston and constructed in 1939. It spanned the Chelsea River providing a means for vehicles to travel between Chelsea, MA and East Boston, MA. Several petroleum-product transfer facilities are located on the Chelsea River, upstream and downstream of the Chelsea Street Bridge. Transit of tank vessels through the bridge is necessary to access the petroleum facilities upstream of the bridge. The narrow, ninety-six foot horizontal span created a narrow passage through the bridge for larger vessels. Adding to the difficulty is

the close proximity of neighboring shore structures and, at times, vessels moored at the Sunoco Logistics facility downstream of the bridge on the East Boston side. These factors led to the establishment of the present safety zone regulation which restricts certain vessel passage through the Chelsea Street Bridge based on vessel dimensional criteria, assist tug support, and daylight restrictions.

Since the implementation of the regulations, physical changes have occurred within the confines of the safety zone. A new vertical lift span bridge with a 175 foot vertical clearance and a 175 foot horizontal navigable channel span has been constructed in place of the old Chelsea Street Bridge. The federal navigational channel has been expanded to a width of 175 feet. Six new permanent fixed lighted aids to navigation structures have been installed in the immediate area of the bridge to best mark the new channel.

The three written comments received in the docket were all in favor of disestablishing the safety zone. Two of those written comments were from the Boston Harbor Pilots Association and one joint comment from the three oil terminals up river of the safety zone; Global Partners LP, Gulf Oil Limited Partnership, and Irving Oil Terminals Inc. All the verbal comments received in the public meetings were in favor of disestablishing the safety zone. These comments can be seen in the docket under meeting minutes.

C. Discussion of the Final Rule

This final rule was based on comments received on the advance notice of proposed rulemaking; recommending the Coast Guard remove the existing safety zone and no comments on the notice of proposed rulemaking. We received one comment on the NPRM supporting the Coast Guard's proposal to disestablish the safety zone. The commenter agreed that the zone is now unnecessary to promote navigational safety.

This rulemaking will disestablish the existing safety zone codified at 33 CFR 165.120, Safety Zone: Chelsea River, Boston Inner Harbor, Boston, MA. This safety zone is being disestablished because physical changes within the confines of the safety zone now make the safety zone unnecessary.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be minimal because removing this safety zone would lessen the restriction on vessels transiting this area.

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 Coast Guard received three written comments and multiple other comments from professional mariners, oil terminals and the general public. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

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.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded 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 disestablishment of an existing safety zone. This action is categorically excluded from further review under, paragraph 34(g) of figure 2–1 of the Commandant Instruction.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.120 [Removed]

- 2. Remove § 165.120.

Dated: September 11, 2013.

J.C. O’Connor III,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2013–23272 Filed 9–24–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0271; FRL–9901–23–Region 4]

Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements for Enterprise Holdings, Inc. at Cincinnati/Northern Kentucky International Airport in Boone County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on April 25, 2013, for the purpose of exempting an Enterprise Holdings, Inc., facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Enterprise Holdings, Inc., facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA’s approval of this revision to Kentucky’s SIP is based on the December 12, 2006, EPA policy memorandum from Stephen D. Page, entitled “*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.*” This action is being taken pursuant to the CAA.

DATES: *Effective Date:* This rule will be effective October 25, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0271. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA

requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this source specific SIP revision, contact Ms. Kelly Sheckler, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler’s telephone number is (404) 562–9222; email address: sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Background

Under the CAA Amendments of 1990, EPA designated and classified three Kentucky Counties (Boone, Campbell and Kenton) and four Ohio Counties (Butler, Clermont, Hamilton and Warren) as a “moderate” nonattainment area for the 1-hour ozone national ambient air quality standards (NAAQS) as part of the Cincinnati/Northern Kentucky Area. See 56 FR 56694, effective January 6, 1992. The designation was based on the Area’s 1-hour ozone design value of 0.157 parts per million for the three year period of 1988–1990.

Pursuant to the requirements of section 182(b)(3) of the CAA, KDAQ developed the Kentucky Administrative Regulation (KAR) 401 KAR 59:174 *Stage II controls at gasoline dispensing facilities*, and submitted the rule to EPA for approval as part of Kentucky’s ozone SIP. The rule was adopted by Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998. See 63 FR 67586. Under this regulation, gasoline dispensing facilities with a monthly throughput of 25,000 gallons or more located in a Kentucky County in which the entire County is classified as severe, serious, or moderate nonattainment for ozone are required to install Stage II vapor recovery systems.

On October 29, 1999, KDAQ submitted to EPA an ozone maintenance plan and request for redesignation of the Kentucky portion of Cincinnati/Northern Kentucky area to attainment. At that time the area had three years of attaining data (1996–1998) and Kentucky had implemented all measures then required by the CAA for

a moderate 1-hour ozone nonattainment area. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and volatile organic compounds (VOC) emissions in the Area would remain below the 1990 “attainment year’s” levels. In making these projections KDAQ factored in the emissions benefit (primarily VOC) of the Area’s Stage II program, and did not remove this program from the Kentucky SIP. The redesignation request and maintenance plan were approved by EPA, effective June 19, 2000 (65 FR 37879).

Since the Kentucky Stage II program was already in place and had been included in the Commonwealth’s October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Area, KDAQ elected not to remove the program from the SIP at that time. On April 6, 1994, EPA promulgated regulations requiring the phase-in of onboard refueling vapor recovery (ORVR) systems on new motor vehicles. Under section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards.

KDAQ submitted a SIP revision on April 25, 2013, to exempt Stage II vapor control requirements for the Enterprise Holdings, Inc., facility located at the Cincinnati/Northern Kentucky International Airport in Boone County. On May 16, 2013, EPA published a proposed rulemaking to approve Kentucky’s April 25, 2013, SIP revision related to Stage II requirements at the Enterprise Holdings, Inc., facility. Detailed background for today’s final rulemaking can be found in EPA’s May 16, 2013, proposed rulemaking. *See* 78 FR 28776. The comment period for this proposed rulemaking closed on June 17, 2013. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. Final Action

EPA is taking final action to approve the aforementioned source-specific SIP revision request from Kentucky. VOC emissions from vehicles at the Cincinnati/Northern Kentucky International Airport Enterprise Holdings, Inc., facility are controlled by ORVR, therefore, EPA has concluded that removal of Stage II requirements at this facility would not result in an increase of VOC emissions, and thus would not contribute to ozone formation. The Commonwealth has requested removal of this requirement for this facility and EPA has determined that Kentucky has fully satisfied the requirements of section 110(l) of the

CAA. Therefore, EPA is taking final action to approve this source-specific SIP revision, as being consistent with section 110 of the CAA.

III. 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 25, 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 11, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF PLANS]

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

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

Subpart (S)—Kentucky

- 2. Section 52.920 is amended, under Table 1, by revising the entry for “401 KAR 59:174” to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 59 New Source Standards				
*	*	*	*	*
401 KAR 59:174	Stage II controls at gasoline dispensing facilities.	04/25/13	09/25/13 [Insert citation of publication].	Exemption from Stage II vapor control requirements for rental fleet vehicle refueling at the Cincinnati/Northern Kentucky International Airport Enterprise Holdings, Inc., facility.
*	*	*	*	*

* * * * *
 [FR Doc. 2013-22973 Filed 9-24-13; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2012-0568; FRL-9396-1]

FD&C Blue No. 1; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of FD&C Blue No. 1 (CAS Reg. No. 3844-45-9) when used as an inert ingredient (dye) in pesticides formulation applied to growing crops (seed treatment). Exponent on behalf of Sensient Colors, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of FD&C Blue No. 1.

DATES: This regulation is effective September 25, 2013. Objections and requests for hearings must be received on or before November 25, 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-2012-0568, 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: RDfRNNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

[idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl](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-2012-0568 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 25, 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-2012-0568, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

• *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

II. Petition for Exemption

In the **Federal Register** of August 22, 2012 (77 FR 50661) (FRL-9358-9), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 2E8004) by Exponent (1150 Connecticut Ave. NW., Suite 1100, Washington, DC 20036) on behalf of Sensient Colors, LLC (2515 N. Jefferson Ave., St. Louis, MO 63106). The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of FD&C Blue No. 1 (CAS Reg. No. 3844-45-9) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops (seed treatment). That document referenced a summary of the petition prepared by Exponent on behalf of Sensient Colors, LLC, the petitioner, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for FD&C Blue No. 1 including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with FD&C Blue No. 1 follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the

sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by FD&C Blue No. 1 as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit. The chemical is also referred to as Brilliant Blue FCF in this document, as this name is synonymous with FD&C Blue No. 1.

FD&C Blue No. 1 is not acutely toxic via the oral route in rats and via subcutaneous injection in mice. Long-term studies of the effects of the color administered in the diet to dogs, rats and mice did not indicate any significant toxic effects. In a chronic dog study, treatment at doses up to 200 milligrams/kilogram bodyweight/day (mg/kg bw/day) for a time period of 1 year did not show any treatment related signs of toxicity or histological abnormalities. In a 2-year study, rats fed a diet containing up to 2,000 mg/kg bw/day Brilliant Blue FCF showed no evidence of treatment related effects. In a second long term study in rats, Brilliant Blue FCF was fed as part of the diet for 75 weeks. No treatment related effects were found at 1,500 mg/kg bw/day, the highest dose tested.

Lifetime exposure of mice to Brilliant Blue FCF as part of the diet did not result in consistent biologically significant, compound related adverse effects on behavior, morbidity, mortality, hematology, general physical observations or tumor incidence. The NOAEL for this study was determined to be 7,354 mg/kg bw/day for male and 8,966 mg/kg bw/day for female, the highest doses tested.

Rats were treated with Brilliant Blue FCF in a chronic toxicity study coupled with a reproductive study. The NOAEL was 1,072 mg/kg bw/day for male rats and 631 mg/kg bw/day for females, based on a 15% decrease in terminal mean body weight and decreased survival in high dose females. In the reproductive portion of the study, there were no compound related effects on fertility, gestation, parturition, lactation, pup survival through weaning, or on number of live and stillborn pups. The NOAEL was 1,073 mg/kg bw/day male rats and 1,318 mg/kg bw/day for females.

Brilliant Blue FCF was fed to three successive generations of male and female rats at dose levels up to 1,000 mg/kg bw/day. There were no treatment related effects on adult mortality, mating, pregnancy and fertility rates, lengths of gestation period, offspring survival or sex, litter survival or

necropsy findings. The NOAEL for this study was 1,000 mg/kg bw/day, the highest dose tested. Two additional reproductive studies in rats and rabbits did not result fetal toxicity or anomalies at doses up to 2,000 mg/kg bw/day and 200 mg/kg bw day, respectively.

Based on the results of the available genotoxicity studies, it was concluded that Brilliant Blue FCF is not of concern with respect to genotoxicity. A developmental neurotoxicity study also indicates that there were no toxicological effects of concern. Immunotoxicity studies were not available for review. However, signs of immunotoxicity were not observed in any of the available studies conducted at doses above the limit dose of 1,000 mg/kg/day. The metabolism of Brilliant Blue FCF was determined in multiple studies. In three studies with rats that were given Brilliant Blue FCF either via gavage or in the diet, the major route of excretion was through the feces with total recoveries at a minimum of 92% indicating very limited absorption via oral route of exposure. The lack of gastrointestinal absorption and metabolism was confirmed by studies in guinea pigs and mice.

B. Toxicological Points of Departure/ Levels of Concern

The available toxicity studies indicate that FD&C Blue No. 1 has a very low overall toxicity. A NOAEL of 1,072 mg/kg bw/day for male rats and 631 mg/kg bw/day for females can be derived from a chronic toxicity study coupled with a reproductive study based on a 15% decrease in terminal mean body weight and decreased survival in high dose females. However, these results were not reproducible in several other chronic longer duration studies at higher doses. Several long-term studies indicate a higher NOAEL above the limit dose. Therefore, EPA concludes that the existing database does not show a toxic endpoint of concern for acute, chronic, and short- and intermediate-term risks, and, accordingly, a quantitative risk assessment for FD&C Blue No. 1 is not necessary.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to FD&C Blue No. 1, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from FD&C Blue No. 1 in food as follows: Dietary exposure to FD&C Blue No. 1 can occur from eating food treated with pesticide formulations containing this inert ingredient. Dietary exposure can also

occur from eating foods which contain FD&C Blue No. 1 as an ingredient. It is widely used as an ingredient in food products such as ice cream, bottled food coloring, icings, ice pops, dairy products, sweets and drinks. However, since an endpoint of concern for risk assessment was not identified, a quantitative dietary exposure assessment for FD&C Blue No. 1 was not conducted.

2. *Dietary exposure from drinking water.* Dietary exposure from drinking water to FD&C Blue No. 1 can occur by drinking water that has been contaminated by run-off from a pesticide treated area. Since an endpoint for risk assessment was not identified, a quantitative dietary exposure assessment from drinking water for FD&C Blue No. 1 was not conducted.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The proposed use of FD&C Blue No. 1 as a seed treatment/dye under 40 CFR 180.920 is not expected to result in residential exposure to this chemical. Residential exposure is possible based on other currently approved inert uses of this chemical. However, since there are no toxicological effects of concern identified, it is not necessary to conduct assessments of residential (non-occupational) exposures and risks. There are no dermal or inhalation toxicological endpoints of concern to the Agency therefore quantitative assessments have not been conducted.

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 FD&C Blue No. 1 to share a common mechanism of toxicity with any other substances, and FD&C Blue No. 1 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that FD&C Blue No. 1 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

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.

The available toxicity studies suggest low toxicity of FD&C Blue No. 1. The toxicity database for FD&C Blue No. 1 contains an acute oral toxicity study, sub-chronic and chronic toxicity studies, including carcinogenicity, reproductive and developmental toxicity studies. No reproductive or developmental toxicity was observed in the modified reproduction study, 3-generation reproduction study and developmental toxicity studies in rats and rabbits. The database also contains mutagenicity studies, neurotoxicity data and metabolism data. There is no indication, based upon the available data, that FD&C Blue No. 1 is a neurotoxic or immunotoxic chemical or results in increased qualitative or quantitative susceptibility in infants or children. Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to this chemical when used as inert ingredient in pesticides formulations. Due to the lack of toxicity of FD&C No. 1, EPA did not use safety factors in qualitatively assessing its risk, and, for the same reason, no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on FD&C Blue No. 1, EPA has determined that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to FD&C Blue No. 1 residues under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of FD&C Blue No. 1 when used

as an inert ingredient (dye) in pesticide formulations applied to growing crops (seed treatment) is safe under FFDCA section 408.

V. 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 Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for FD&C Blue No. 1.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for FD&C Blue No. 1 (CAS Reg. No. 3844–45–9) when used as an inert ingredient (dye) in pesticide formulations applied to growing crops (seed treatment).

VII. 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 types of actions from review under Executive

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply

to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 17, 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 § 180.920, alphabetically add the following inert ingredient to the table, after the entry for Europic chloride and before the entry for FD&C Blue No. 1, methyl-polyethylene glycol derivative (CAS Reg. No. 9079–34–9), to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemption from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	* * * * *	* * * * *
FD&C Blue No. 1 (CAS Reg. No. 3844–45–9)	For seed treatment use only	Dye, coloring agent
* * * * *	* * * * *	* * * * *

[FR Doc. 2013-23371 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 271 and 272****[EPA-R06-2013-0027; FRL-9819-8]****Louisiana: Final Authorization of State-Initiated Changes and Incorporation by Reference of Approved State Hazardous Waste Management Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: During a review of Louisiana's regulations, the EPA identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this direct Final action. In addition, this document corrects technical errors made in the June 28, 2012 **Federal Register** authorization document for Louisiana.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Louisiana's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective November 25, 2013, unless the EPA receives adverse written comment on the codification of the Louisiana authorized program by the close of business October 25, 2013. If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the Louisiana statutes and regulations contained in

this rule is approved by the Director of the Federal Register as of November 25, 2013 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* patterson.alima@epa.gov or banks.julia@epa.gov

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or email. The Federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means the 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 [regulations.gov](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 disk or CD-ROM 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 additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-

2733, phone number (214) 665-8533 or (214) 665-8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone numbers: (214) 665-8533 or (214) 665-8178, and Email address patterson.alima@epa.gov or banks.julia@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Authorization of State-Initiated Changes***A. Why are revisions to State programs necessary?*

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

We conclude that Louisiana's revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Louisiana's rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Louisiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the

limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Louisiana is being authorized by this direct final action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization in this codification document we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program we may withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorized State program will become effective and which part is being withdrawn. The purpose of this **Federal Register** document is to codify Louisiana's base hazardous waste management program and its revisions to that program. The EPA has already provided notices and opportunity for comments on the Agency's decisions to codify the Louisiana's program, and the EPA is not now reopening the decisions, nor requesting comments, on the Louisiana authorization as published in the **Federal Register** notices specified in Section I.F of this document.

F. For what has Louisiana previously been authorized?

The State of Louisiana initially received final authorization on January 24, 1985, effective February 7, 1985 (see 50 FR 3348), to implement its Base Hazardous Waste Management Program. Louisiana received authorization for revisions to its program effective January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958) as corrected October 15, 1991 (56 FR 51762); January 23, 1995 (59 FR 55368) as corrected April 11, 1995 (60 FR 18360); March 8, 1995 (59 FR 66200); January 2, 1996 (60 FR 53704 and 60 FR 53707); June 11, 1996 (61 FR 13777), March 16, 1998 (62

FR 67572), December 22, 1998 (63 FR 56830), October 25, 1999 (64 FR 46302), November 1, 1999 (64 FR 48099), April 28, 2000 (65 FR 10411), March 5, 2001 (66 FR 23), February 9, 2004 (68 FR 68526), August 9, 2005 (70 FR 33852), January 12, 2007 (71 FR 66118), October 15, 2007 (72 FR 45905), July 20, 2009 (74 FR 23645), October 4, 2010 (75 FR 47223), August 23, 2011 (76 FR 37021), August 27, 2012 (77 FR 38530); and September 11, 2012 (77 FR 41292).

While EPA is not authorizing any new Louisiana statutory provisions, be advised that the State of Louisiana has revised some of the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program in Louisiana. On June 17, 2010, the provision at subparagraph C(1)(b) of section 30:2011 of the Louisiana Revised Statutes which addressed the authority of the Office of Environmental Assessment was moved to 30:2011.D(26) as part of the authority of the Secretary of the Department of Environmental Quality to provide for the functions of environmental air quality assessment, water quality assessment, remediation services, and laboratory services.

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Louisiana final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA statutory provisions or RCRA regulations found at 40 CFR as of July 1, 2010. The Louisiana provisions are from the Louisiana Administrative Code (LAC), Title 33, Part V dated September 2011 (except as noted below).

State requirement	Analogous Federal requirement
LAC 33: Part I, Chapter 19, Sections 1905.C and 1909.E (11/20/10)	No direct Federal analog.
105.A.1	RCRA 3010(a) related.
105.A.2	RCRA 3010(a) related.
108.G.4	40 CFR 261.5(g) related.
109. Solid Waste.5.b.iii-iv	261.2(e)(2)(iii)-(iv).
3099, Appendix A	40 CFR Part 266, Appendix I/Table I-A—Table I-E.
3099, Appendices B-I	40 CFR Part 266, Appendices II-IX.
3099, Appendices J-L	40 CFR Part 266, Appendices XI-XIII.

State requirement	Analogous Federal requirement
3705.D	40 CFR 264.142(d).
4143.B.2–4, except the word “and” at the end of 4143.B.4	40 CFR 266.70(b)(2).
LAC 33, Part VII, Sections 301.A.2.a (June, 2011); 315.J (June, 2011); and 521.H (Repealed) (November 2011).	40 CFR 261.5(f)(3)(iv)–(v) and 261.5(g)(3)(iv)–(v).

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Technical Corrections

The following technical corrections are made to the June 28, 2012 Louisiana authorization **Federal Register** document. The corrections being made address corrections to the list of citations for checklist entries that was included in the published **Federal Register** document and are presented in order of the checklist number, followed by a brief description of the correction being made.

A. Corrections to the 6/28/12 Federal Register (77 FR 38530; Effective 8/27/12)

1. For Checklist 223, the following corrections should be made:
 - a. The citation “109, table 1” is corrected to read “109 Solid waste, table 1”.
 - b. The citation “2299, Appendix 7” is corrected to read “2299, Appendix Table 7”.

III. Incorporation-by-Reference

A. What is codification?

Codification is the process of placing a State’s statutes and regulations that comprise the State’s authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections

3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public’s ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of codification of Louisiana’s hazardous waste management program?

The EPA incorporated by reference Louisiana’s then authorized hazardous waste management program effective March 16, 1998 (62 FR 67578), October 4, 2010 (75 FR 47223), and September 11, 2012 (77 FR 41292).

In this document, the EPA is revising Subpart T of 40 CFR part 272 to include the authorization revision actions effective August 27, 2012 (77 FR 38530).

C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify Louisiana’s base hazardous waste management program and its revisions to that program. The document incorporates by reference Louisiana’s hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Louisiana’s authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Louisiana hazardous waste management program.

The EPA is incorporating by reference the Louisiana authorized hazardous waste management program in subpart T of 40 CFR part 272. Section 272.951 incorporates by reference Louisiana’s authorized hazardous waste statutes and regulations. Section 272.951 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State’s implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General’s Statements and the Program Description, which are approved as part

of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Louisiana’s codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Louisiana procedural and enforcement authorities. Section 272.951(c)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State’s implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State’s approved program, but these are not incorporated by reference.

E. What state provisions are not part of the codification?

The public needs to be aware that some provisions of Louisiana’s hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

- (1) provisions that are not part of the RCRA subtitle C program because they are “broader in scope” than RCRA subtitle C (see 40 CFR 271.1(i));
- (2) Federal rules adopted by Louisiana but for which the State is not authorized;
- (3) Unauthorized amendments to authorized State provisions; and
- (4) New unauthorized State requirements.

State provisions that are “broader in scope” than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.951(c)(3) lists the Louisiana regulatory provisions which are “broader in scope” than the Federal program and which are not part of the

authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Additionally, Louisiana's hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as certain Federal rules and new State requirements.

Federal rules Louisiana has adopted but is not authorized for include those published in the **Federal Register** on August 8, 1986 (51 FR 28664); December 1, 1987 (52 FR 45788; Post-Closure Permits requirements); and April 12, 1996 (61 FR 16290). In those instances where Louisiana has made unauthorized amendments to previously authorized sections of State code, the EPA is identifying in 40 CFR 272.951(c)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by the EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in Louisiana hazardous waste regulations incorporated by reference at 40 CFR 272.951(c)(1), the EPA will only enforce those portions of the State regulations that are actually authorized by the EPA. For the convenience of the regulated community, the actual State regulatory text authorized by the EPA for the citations listed at 272.951(c)(4) (i.e., without the unauthorized amendments) is compiled as a separate document, *Addendum to the EPA Approved Louisiana Regulatory Requirements Applicable to the Hazardous Waste Management Program, September 2012*. This document is available from EPA Region 6, Sixth Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533, and also Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559.

State regulations that are not incorporated by reference in this rule at 40 CFR 272.951(c)(1), or that are not listed in 40 CFR 272.951(c)(2) ("legal basis for the State's implementation of the hazardous waste management program"), 40 CFR 272.951(c)(3)

("broader in scope") or 40 CFR 272.951(c)(4) ("unauthorized state amendments"), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from

the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference Louisiana's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Louisiana's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps

to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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. The EPA will submit a report containing this document 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 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). This action will be effective November 25, 2013.

List of Subjects

40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 2, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under part 271 to the State of Louisiana for

revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows.

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.951 to read as follows:

§ 272.951 Louisiana State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Louisiana final authorization for the following elements as submitted to EPA in Louisiana’s base program application for final authorization which was approved by EPA effective on February 7, 1985. Subsequent program revision applications were approved effective on January 29, 1990, October 25, 1991 as corrected October 15, 1991; January 23, 1995 as corrected April 11, 1995; March 8, 1995; January 2, 1996; June 11, 1996, March 16, 1998, December 22, 1998, October 25, 1999, November 1, 1999, April 28, 2000, March 5, 2001, February 9, 2004, August 9, 2005, January 12, 2007, October 15, 2007, July 20, 2009, October 4, 2010, August 23, 2011, August 27, 2012, September 11, 2012 and November 25, 2013.

(b) The State of Louisiana has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The Louisiana statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Louisiana regulations that are incorporated by reference in this

paragraph from the Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804–9095; Phone number: (225) 342–5015; Web site: <http://doa.louisiana.gov/osr/lac/lac.htm>. The statutes are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526; Phone: 1–800–328–4880; Web site: <http://west.thomson.com>. You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665–8533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The binder entitled “EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated September 2012.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State’s implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Louisiana Statutes Annotated, Revised Statutes, 2000 Main Volume (effective August 15, 1999), Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 2000: Chapter 1, Section 2002; Chapter 2, Sections 2013, 2014.2, 2020, 2021, 2022.1(B), 2024, 2026 through 2029, 2033.A–D; Chapter 2–A, Section 2050.8; Chapter 9, Sections 2172, 2174, 2175, 2181, 2183.1.B, 2183.2, 2184.B, 2187, 2188.A and C, 2189.A and B, 2190.A–D, 2191.A–C, 2192, 2193, 2196, 2199, 2200, 2203.B and C, 2204.A(2), A(3) and B; Chapter 13, Sections 2294(6), 2295.C; Chapter 16, Section 2369.

(ii) Louisiana Statutes Annotated, Revised Statutes, 2012 (effective August 15, 2011) Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 2, 2011.A(1), 2011.B and C (except 2011.C(1)(b)), 2011.D (except 2011.D(4), (10)–(12), (16), (19), (20), (23) and (25)), 2011.E–G, 2012, 2014.A (except 2014.A.3), 2017, 2019.A–C, 2022.A (except the first sentence of 2022.A(1)), 2022.B and C, 2023 (except 2023.A(2) and phrase “Except as otherwise provided in this Subsection,” in 2023.A(1)), 2025 (except 2025.D, .F(3), .H and .K); Chapter 3, Sections 2054.B(1), 2054.B(2)(a); Chapter 9, Sections 2180.A–C, 2183.C, and .F–H, 2186.A–C; Chapter 18, Section 2417.A.

(iii) Louisiana Administrative Code, Title 33, Part I, Office of The Secretary

Part I, Subpart 1: Departmental Administrative Procedures: Chapter 5, Sections 501.A, effective October 20, 2007, 501.B, effective October 20, 2005, 502, effective September 20, 2008, and 503 through 511, effective October 20, 2005; Chapter 7, Section 705, effective October 20, 2006; Chapter 19, Sections 1901 through 1909, effective November 20, 2010; Chapter 23, Sections 2303 through 2309, effective October 20, 2009.

(iv) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Louisiana Hazardous Waste Regulations, dated September 2011, unless otherwise specified: Chapter 1, Sections 101, 107.A.–C; Chapter 3, Sections 301, 311.A, 311.C, 315 introductory paragraph, 323.B.3; 323.B.4.d and e; Chapter 5, Section, 503; Chapter 7,

Sections 703, 705, 707, 709 through 721; and Chapter 22, Sections 2201.A, 2201.E, 2201.F.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Louisiana Statutes Annotated, Revised Statutes, 2000 Main Volume (effective August 15, 1999), Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 2000: Chapter 9, Sections 2178 and 2197.

(ii) Louisiana Statutes Annotated, Revised Statutes, 2012 (effective August 15, 2011) Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 2, Sections 2014.B and D.

(iii) Louisiana Administrative Code, Title 33, Part I, Office of The Secretary

Part I, Subpart 1: Departmental Administrative Procedures: Chapter 19, Section 1911, effective November 20, 2010.

(iv) Louisiana Administrative Code, Title 33, Part V, Hazardous Waste And Hazardous Materials, Louisiana Hazardous Waste Regulations, dated September 2011, unless otherwise specified: Chapter 1, Section, 108.G.5; Chapter 3, Section 327; Chapter 11, Sections 1101.G and 1109.E.7.f ; Chapter 13, Section 1313; Chapter 51.

(4) *Unauthorized State Amendments.*

(i) Louisiana has adopted but is not authorized to implement the HSWA rules that are listed in the Table in lieu of the EPA. The EPA will enforce the Federal HSWA standards for which Louisiana is not authorized until the State receives specific authorization from EPA.

Federal requirement	Federal Register reference	Publication date
Exports of Hazardous Waste (HSWA)	51 FR 28664	August 8, 1986.
HSWA Codification Rule 2: Post-Closure Permits (HSWA)	52 FR 45788	December 1, 1987.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA)	61 FR 16290	April 12, 1996.

(ii) The following authorized provisions of the Louisiana regulations include amendments published in the Louisiana Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Louisiana hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this section, EPA will enforce the State provisions that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the following Table.

State provision	Effective date of authorized provision
LAC 1111.B.1.c	March 20, 1984.
LAC 1113	March 20, 1984.
LAC 4407.A.12	March 20, 1984.

The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Louisiana Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, August, 2012*. Copies of the document can be obtained from U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202 also Louisiana Department of Environmental Quality,

602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Louisiana, signed by the EPA Regional Administrator on June 15, 2012 is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of Louisiana on December, 13, 1996 and revisions, supplements and addenda to that Statement dated January 13, 1998, January 13, 1999, January 27, 1999, August 19, 1999, August 29, 2000, October 17, 2001, February 25, 2003, October 20, 2004, December 19, 2005, September 5, 2006, October 9, 2008, January 14, 2010, and April 18, 2012 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by revising the listing for “Louisiana” to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Louisiana

The statutory provisions include: Louisiana Statutes Annotated, Revised Statutes, 2000 Main Volume (effective August 15, 1999), Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act, 2000: Chapter 2, Section 2022.1(A); Chapter 8, Section 2153(1); Chapter 9, Sections 2173 (except 2173(9)), 2183.1.A, 2184.A, 2188.B, 2189.C, 2202, 2203.A, 2204.A(1) and C; Chapter 13, Sections 2295.A and B.

Louisiana Statutes Annotated, Revised Statutes, 2012 (effective August 15, 2011) Cumulative Annual Pocket Part, Volume 17B, Subtitle II of Title 30, Louisiana Environmental Quality Act: Chapter 1, Sections 2003, 2004 introductory paragraph, 2004(2)–(4), 2004(7)–(10), 2004(13), 2004(14) (except 2004(14)(b)–(d)), 2004(15), 2004(18); Chapter 2, Section 2022.A(1), first sentence; Chapter 9, Sections 2183.A, B, D, E, and I; Chapter 18, Section 2417.E(5).

Copies of the Louisiana statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526; Phone: 1–800–328–4880; Web site: <http://west.thomson.com>.

The regulatory provisions include: Louisiana Administrative Code, Title 33, Part V, Hazardous Waste and Hazardous Materials, Louisiana Hazardous Waste Regulations, Part V, Subpart 1: Department of Environmental Quality—Hazardous Waste, dated September 2011, amended March 20, 2012 (Louisiana Registers: LR 38:774, LR 38:781, and LR 38:790). Please note that for

some provisions, the authorized version is found in either the LAC, Title 33, Part V, dated December 31, 2009 or June 1995.

Chapter 1—General Provisions And Definitions, Sections 103; 105 (except 105.D.1.q and 105.P); 105.D.1.q (LR 38:790, March 20, 2012); 108 (except 108.E.1 and E.2, 108.G. introductory paragraph, 108.G.2, and 108.G.5); 108.E.1 and .E.2, 108.G introductory paragraph, and 108.G.2 (LR 38:774; March 20, 2012); 109 (except “Batch tank”, “Competent Authorities”, “Concerned Countries”, “Consignee” (both definitions), “Continuous flow tank”, “Country of Transit”, “Empty Container.1.a introductory paragraph, .1.b introductory paragraph, .2.a introductory paragraph, and .2.c introductory paragraph”, “EPA Acknowledgment of Consent”, “Exporting Country”, “Importing Country”, “New Hazardous Waste Management Facility or New Facility”, “Notifier”, “Organization for Economic Cooperation and Development (OECD) Area”, “Primary Exporter”, “Receiving Country”, “Recognized Trader”, “Recovery Facility”, “Recovery Operations”, “Solid Waste. Table 1 entry for “Scrap metal other than excluded scrap metal (see excluded scrap metal)”, “Transfrontier Movement”, “Transit Country”); 109.Empty Container.1.a introductory paragraph, .1.b introductory paragraph, .2.a introductory paragraph, and .2.c introductory paragraph (LR 38:774; March 20, 2012); 109.New Hazardous Waste Management Facility or New Facility (LR 38:774; March 20, 2012); 109.Solid Waste. Table 1 entry for “Scrap metal that is not excluded under LAC 33:V.105.D.1.m” (LR 38:774; March 20, 2012); 110 (except 110.G.1 and reserved provisions); 111;

Chapter 3—General Conditions for Treatment, Storage, and Disposal Facility Permits, Sections 303; 305 (except 305.F and .G); 307 (except 307.B and .C); 307.B—D (LR 38:774; March 20, 2012); 309; 311 (except 311.A and .C); 313; 315.A—D; 317; 319; 321.A (except the phrase “in accordance with LAC 33.I.Chapter 15”); 321.B and .C; 322 (except 322.D.1.g); 323 (except 323.B.3, .B.4.d and .e); 325; 329;

Chapter 5—Permit Application Contents, Sections 501; 505 through 516; 517 (except the following phrases in 517.V: “or 2271, or a determination made under LAC 33:V.2273,” and, “or a determination”); 519 through 528; 529 (except 529.E); 530 through 536; 537 (except 537.B.2.f and .B.2.l); 540 through 699;

Chapter 7—Administrative Procedures for Treatment, Storage, and Disposal Facility Permits, Sections 701; 706; 708;

Chapter 11—Generators, Sections 1101 (except 1101.B and .G); 1103; 1105; 1107 (except reserved provision); 1107.D.7 (LR 38:774; March 20, 2012); 1109 (except 1109.E.1.a.ii, .E.1.e, .E.2, .E.4, .E.5, .E.7.c, .E.7.f, and reserved provision); 1109.E.1.a.ii (December 31, 2009); 1109.E.1.e, .E.2, .E.4, .E.5, and .E.7.c (LR 38:774; March 20, 2012); 1111.A; 1111.B.1 introductory paragraph (except the phrase “to a treatment, storage, or disposal facility within the United States”); 1111.B.1.a.—c.; 1111.B.1.d (except the phrase “within the United States”); 1111.B.1.e (except the phrase “within the United States”); 1111.B.1.f.—h.; 1111.B.2 (except the

phrase “for a period of at least three years from the date of the report” and the third and fourth sentences); 1111.C (except 1111.C.1 and .C.2 introductory paragraph); 1111.C.1, .C.2 introductory paragraph, and .C.4 (LR 38:774; March 20, 2012); 1111.D—E; 1113; 1121; 1199 Appendix A;

Chapter 13—Transporters, Sections 1301 (except 1301.F); 1303; 1305; 1307.A introductory paragraph (except the third sentence); 1307.B; 1307.C (except the last sentence); 1307.D; 1307.E (except the phrase “and, for exports, an EPA Acknowledgment of Consent” at .E.2); 1307.F (except the phrase “and, for exports, an EPA Acknowledgment of Consent” at 1307.F.2); 1307.G (except 1307.G.4); 1307.H; 1309; 1311; 1315 through 1323;

Chapter 15—Treatment, Storage, and Disposal Facilities, Sections 1501 (except reserved provision); 1503 through 1511; 1513 (except 1513.B.2); 1513.B.2 (LR 38:774; March 20, 2012); 1515; 1516.A; 1516.B (except 1516.B.4 and .B.5 introductory paragraph); 1516.B.5 introductory paragraph (LR 38:781; March 20, 2012); 1516.C (except 1516.C.5.a.vi, .C.6.a.i and .C.6.b); 1516.C.5.a.vi, .C.6.a.i, and .C.6.b.—c (LR 38:774; March 20, 2012); 1517 through 1529; 1531 (except 1531.B); 1533; 1535;

Chapter 17—Air Emission Standards, Sections 1701 through 1799; Appendix Table 1;

Chapter 18—Containment Buildings, Sections 1801; 1802; 1803 (except 1803.B.2);

Chapter 19—Tanks, Sections 1901 (December 31, 2009); 1903; 1905; 1907.A—D; 1907.E (December 31, 2009); 1907.F—I; 1909.A—C; 1911 through 1921;

Chapter 20—Integration With Maximum Achievable Control Technology (MACT), Section 2001;

Chapter 21—Containers, Sections 2101 through 2119;

Chapter 22—Prohibitions On Land Disposal, Sections 2201.B—D; 2201.G (except 2201.G.3); 2201.H; 2201.I; 2203.A (except “Cone of Influence”, “Confining Zone”, “Formation”, “Injection Interval”, “Injection Zone”, “Mechanical Integrity”, “Transmissive Fault or Fracture”, “Treatment”, “Underground Source of Drinking Water”); 2203.B; 2205 (except the phrase “or a determination under LAC 33:V.2273,” in 2205.D); 2207; 2208; 2209 (except the phrase “or a determination under LAC 33:V.2273,” in 2209.D.1); 2211; 2213; 2215; 2216 (except the phrase “or 2271” in 2216.E.2); 2218 (except the phrase “or 2271” in 2218.B.2); 2219; 2221.D—F; 2223; 2227 (except 2227.B), 2230, 2231.G—M, 2233, 2236, 2237, 2245.A—I; 2246; 2247 (except 2247.G and .H); 2299 Appendix (except 2299 Table 2 entries K156, K157, and K158, and Tables 4 and 12); 2299 Appendix Table 2 entries K156, K157, and K158 (LR 38:774; March 20, 2012);

Chapter 23—Waste Piles, Sections 2301 through 2313; 2315 (except the word “either” at the end of the introductory paragraph; the word “or” at the end of 2315.B.1; and 2315.B.2); 2317;

Chapter 24—Hazardous Waste Munitions And Explosives Storage, Sections 2401 through 2405;

Chapter 25—Landfills, Sections 2501 through 2517; 2519 (except 2519.A.2);

2519.A.2 (LR 38:774; March 20, 2012); 2521; 2523;

Chapter 26—Corrective Action Management Units And Temporary Units, Sections 2601; 2602; 2603 (except 2603.A.3.b, 2603.A.3.d, and 2603.E.4.d.vi); 2603.A.3.b, 2603.A.3.d, and 2603.E.4.d.vi (LR 38:774; March 20, 2012); 2604 through 2607;

Chapter 27—Land Treatment, Sections 2701 through 2723;

Chapter 28—Drip Pads, Sections 2801 through 2807; 2809 (except the word “either” at the end of 2809.B introductory paragraph; the word “or” at the end of 2809.B.1; and 2809.B.2);

Chapter 29—Surface Impoundments, Sections 2901 through 2909; 2911 (except the word “either” at end of 2911.B introductory paragraph and 2911.B.1); 2913 through 2919;

Chapter 30—Hazardous Waste Burned In Boilers And Industrial Furnaces, Sections 3001 through 3007; 3009 (except reserved provision); 3011 through 3025; 3099 Appendices A through L;

Chapter 31—Incinerators, Sections 3101 through 3121;

Chapter 32—Miscellaneous Units, Sections 3201; 3203; 3205; 3207 (except 3207.C.2);

Chapter 33—Groundwater Protection, Sections 3301 through 3321; 3322 (except 3322.D); 3323; 3325;

Chapter 35—Closure and Post-Closure, Sections 3501 through 3505; 3507 (except 3507.B); 3509 through 3519; 3521 (except 3521.A.3); 3523 through 3527;

Chapter 37—Financial Requirements, Sections 3701 through 3719;

Chapter 38—Universal Wastes, Sections 3801 through 3811; 3813 (except “Mercury-containing Lamp”); 3815 through 3833; 3835 (except the phrase “, other than to those OECD countries . . . requirements of LAC 33:V.Chapter 11.Subchapter B),” at 3835.A introductory paragraph); 3837 through 3855; 3857 (except the phrase “, other than to those OECD countries . . . requirements of LAC 33:V.Chapter 11.Subchapter B),” at 3857.A introductory paragraph); 3859 through 3869; 3871.A introductory paragraph (except the phrase “other than to those OECD countries . . . requirements of LAC 33:V.Chapter 11.Subchapter B.”); 3871.A.1.—2; 3873 through 3877; 3879 (except 3879.B); 3881; 3883;

Chapter 40—Used Oil, Sections 4001 through 4093;

Chapter 41—Recyclable Materials, Sections 4101; 4105 (except 4105.A.1 introductory paragraph, .A.1.a.i and ii, .A.2 introductory paragraph, .A.2.b, and .A.4); 4105.A.1 introductory paragraph, .A.2 introductory paragraph, and .A.2.b (LR 38:774; March 20, 2012); 4139; 4141; 4143 (except the word “and” at the end of 4143.B.4 and 4143.B.5); 4145; and 4145 Table entries 6 and 7 (LR 38:781; March 20, 2012);

Chapter 42—Conditional Exemption for Low-Level Mixed Waste Storage and Disposal, Sections 4201 through 4243;

Chapter 43—Interim Status, Sections 4301.A; 4301.B (June 1995); 4301.B; 4301.C (June 1995); 4301.C —I; 4302 through 4371; 4373 (except the last two sentences “The administrative authority . . . as demonstrated in accordance with LAC 33:I.Chapter 13.” in 4373.K.1); 4375; 4377;

4379 (except 4379.B); 4381 through 4387; 4389 (except 4389.C); 4391 through 4397; 4399 (except 4399.A.6.i); 4401 through 4413; 4417 through 4435; 4437 (except 4437.E.1, 4437.E.2, and 4437.J); 4437.E.1 and .E.2 (December 31, 2009); 4438 through 4456; 4457.A (except 4457.A.2); 4457.B (except the phrase: "If the owner or operator . . . he must" in the introductory paragraph); 4457.C; 4459 through 4474; 4475 (except the word "either" at the end of 4475.B introductory paragraph; the word "or" at the end of 4475.B.1; and 4475.B.2); 4476 through 4499; 4501 (except 4501.D.3); 4502 through 4509; 4511 (except 4511.A.2); 4511.A.2 (LR 38:774; March 20, 2012); 4512 through 4703; 4705 (except the word "either" at the end of 4705.B introductory paragraph; the word "or" at the end of 4705.B.1; and 4705.B.2); 4707 through 4739;

Chapter 49—Lists Of Hazardous Wastes, Sections 4901 (except 4901.A.1 and .A.2, 4901.F Table 4 entry U239 Benzene [numerical order listing], and 4901.G Table 6 entries K062, K069, K088, K093); 4901.A.1 and .A.2, 4901.F Table 4 entry U239 Benzene [numerical order listing], and 4901.G Table 6 entries K062, K069, K088, K093 (LR 38:774; March 20, 2012); 4903 (except 4903.D.8); 4903.D.8 (LR 38:774; March 20, 2012); 4907; 4909.A (LR 38:790; March 20, 2012); 4909.B and .C; 4909.D.1 (except 4909.D.1.v) (LR 38:790; March 20, 2012); 4909.D.1.b.v; 4909.D.2 introductory paragraph (LR 38:790; March 20, 2012); 4909.D.2.a.–d; 4909.D.3 (LR 38:790; March 20, 2012); 4909.D.4; 4909.D.5 (except 4909.D.5.a.ii); 4909.D.5.a.ii (LR 38:790; March 20, 2012); 4909.D.6 (LR 38:790; March 20, 2012); 4909.D.7 (except 4909.D.7 introductory paragraph, 4909.D.7.a.i, 4909.D.7.a.iii through .D.7.b.i, and 4909.D.7.c); 4909.D.7 introductory paragraph, 4909.D.7.a.i, 4909.D.7.a.iii through .D.7.b.i, and 4909.D.7.c (LR 38:790; March 20, 2012); 4909.D.8 introductory paragraph through .D.8.a.i (LR 38:790; March 20, 2012); 4909.D.8.a.ii–iv; 4909.D.8.a.iv Note through 4909.D.8.c (LR 38:790; March 20, 2012); 4909.D.8.d and .e; 4909.D.8.f and .g (LR 38:790; March 20, 2012); 4909.D.8.h (except 4909.D.8.h.ii) (LR 38:790; March 20, 2012); 4909.D.8.h.ii; 4909.D.8.i (LR 38:790; March 20, 2012); 4909.D.9 (LR 38:790; March 20, 2012); 4909.D.10 (except 4909.D.10 introductory paragraph, 4909.D.10.a.ii, 4909.D.10.b.–g, 4909.D.10.h introductory paragraph, 4909.D.10.i introductory paragraph through 4909.D.10.i.ii, and 4909.D.10.i.iv); 4909.D.10 introductory paragraph, 4909.D.10.a.ii, 4909.D.10.b.–g, 4909.D.10.h introductory paragraph, 4909.D.10.i introductory paragraph through 4909.D.10.i.ii, and 4909.D.10.i.iv (LR 38:790; March 20, 2012); 4909.D.11 through .E and Table 7 (LR 38:790; March 20, 2012); 4911 through 4915; 4999 Appendices C through E; Chapter 53—Military Munitions, Sections 5301 through 5311;

Louisiana Administrative Code, Title 33, Part VII, Solid Waste, as amended through June 2011; Sections 301.A.2.a and 315.J.

Copies of the Louisiana Administrative Code as published by the Office of the State Register, P.O. Box 94095, Baton Rouge, LA

70804–9095; Phone: (225) 342–5015; Web site: <http://doa.louisiana.gov/osr/lac/lac.htm>.

* * * * *

[FR Doc. 2013–22972 Filed 9–24–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 192, 193, 195, and 199

[Docket No. PHMSA–2012–0102; Amdt. Nos. 190–16, 192–118, 193–24, 195–98, 199–25]

RIN 2137–AE92

Pipeline Safety: Administrative Procedures; Updates and Technical Corrections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the pipeline safety regulations to update the administrative civil penalty maximums for violation of the safety standards to reflect current law, to update the informal hearing and adjudication process for pipeline enforcement matters to reflect current law, and to make other technical corrections and updates to certain administrative procedures. The amendments do not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

DATES: The effective date of these amendments is October 25, 2013.

FOR FURTHER INFORMATION CONTACT: Kristin T.L. Baldwin, Office of Chief Counsel, 202–366–6139, kristin.baldwin@dot.gov; or mail to: Renita K. Bivins, Office of Chief Counsel, 202–366–5947, renita.bivins@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Notice of Proposed Rulemaking

On August 13, 2012, PHMSA published a Notice of Proposed Rulemaking (NPRM) under Docket ID PHMSA–2012–0102, (77 FR 48112) notifying the public of the proposed changes to 49 CFR Parts 190, 192, 193, 195, and 199. The amendments proposed in the NPRM were intended to implement mandates in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90) (the 2011 Act) and to make other

technical and administrative corrections. During the 30-day comment period, PHMSA received a total of five comments. Three comments were from trade organizations, including the Interstate Natural Gas Association of America (INGAA), the Association of Oil Pipelines and the American Petroleum Institute (AOPL/API), and the American Gas Association (AGA). One comment was received from a pipeline operator, who solely endorsed the comments of INGAA. The final comment was received from a private citizen.

B. Advisory Committee Meetings

On December 11–13, 2012, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) met jointly in Alexandria, Virginia. The TPSSC and THLPSSC are statutorily mandated advisory committees under 49 U.S.C. 60115 that provide non-binding recommendations to PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas and hazardous liquid pipelines. Although the NPRM did not implicate the committees' statutory mandate with regard to proposed safety standards, PHMSA requested input from the committees given the potential impact on administrative enforcement processes.

After considering the NPRM and public comments, the TPSSC recommended approval of the NPRM as proposed. The THLPSSC recommended approval of the NPRM, with unspecified modifications consistent with the public comments and certain principles, including transparency, completeness, increased formality, timeliness, regulatory certainty, and due process.

II. Discussion of Comments

The comments received from the trade organizations and the THLPSSC are discussed below. The comment from the private citizen is not discussed because it was outside the scope of this rulemaking. To facilitate the reader, the following list of contents is provided:

Subpart A—General

1. § 190.1 Purpose and scope.
2. § 190.3 Definitions.
3. § 190.5 Service.
4. § 190.7 Subpoenas; witness fees.
5. § 190.11 Availability of informal guidance and interpretive assistance.

Subpart B—Enforcement

6. § 190.201 Purpose and scope.

7. § 190.203 Inspections and investigations—requests for specific information.
8. § 190.203 Inspections and investigations—obstructing an investigation.
9. § 190.205 Warnings.
10. § 190.206 Amendment of plans or procedures (redesignated from § 190.237).
11. § 190.207 Notice of probable violation.
12. § 190.208 Response options (redesignated from § 190.209).
13. § 190.209 Case file (new section).
14. § 190.210 Separation of functions (new section).
15. § 190.211 Hearing—exchange of evidentiary material and withdrawal.
16. § 190.211 Hearing—formality.
17. § 190.211 Hearing—transcripts.
18. § 190.211 Hearing—recommended decision.
19. § 190.212 Presiding official, powers, and duties (new section).
20. § 190.213 Final order.
21. § 190.217 Compliance orders generally.
22. § 190.219 Consent order.
23. § 190.221 Civil penalties generally.
24. § 190.223 Maximum penalties.
25. § 190.225 Assessment considerations.
26. § 190.227 Payment of penalty.
27. § 190.233 Corrective action orders.
28. § 190.239 Safety orders.
29. § 190.241 Finality (new section).
30. § 190.243 Petitions for reconsideration (redesignated from § 190.215).

Subpart C—Criminal Enforcement (New Subpart)

31. § 190.291 Criminal penalties generally (redesignated from § 190.229).
32. § 190.293 Referral for prosecution (redesignated from § 190.231).

Subpart D—Procedures for Adoption of Rules (Redesignated From Subpart C)

33. § 190.319 Petitions for extension of time to comment.
34. § 190.321 Contents of written comments.
35. § 190.327 Hearings.
36. § 190.335 Petitions for reconsideration.
37. § 190.337 Proceedings on petitions for reconsideration.
38. § 190.338 Appeals.
39. § 190.341 Special permits.

Amendments to Parts 192–199

40. § 192.603 General provisions.
41. § 193.2017 Plans and procedures.
42. § 195.402 Procedural manual for operations, maintenance, and emergencies.
43. § 199.101 Anti-drug plan.

Subpart A—General

1. Purpose and Scope (§ 190.1)

The NPRM proposed to amend § 190.1(a) to remove the citation to the hazardous materials transportation laws. PHMSA did not receive any comments and is adopting the amendment.

Consistent with other amendments in this rule, PHMSA is adding a reference to the Federal Water Pollution Control Act (33 U.S.C. 1321) in accordance with section 10 of the 2011 Act.

2. Definitions (§ 190.3)

The NPRM proposed to amend the definition of “Presiding Official” and to add new definitions for “Associate Administrator,” “Chief Counsel,” “Day,” and “Operator.” No comments were received regarding the definitions. PHMSA is adopting the definitions with minor changes. A revised definition of “Associate Administrator,” which includes his or her delegate, is adopted. The definition of “Day” is revised to clarify that it means a calendar day, unless otherwise noted. PHMSA is also clarifying the definition of a “Respondent” includes the recipient of any enforcement action under Subpart B of Part 190.

3. Service (§ 190.5)

PHMSA did not propose to amend § 190.5, but INGAA requested that PHMSA amend § 190.5(b) by designating specific individuals that may be served with notices, orders, or other PHMSA documents. INGAA proposed that PHMSA adopt a practice under which operators designate certain individuals to receive service and then have a continuing obligation to update that information. INGAA stated that its members could provide this information while updating gas transmission annual reports. INGAA noted that, in the experience of its members, enforcement notices and orders are often served on various field offices and officials without direct responsibility for compliance.

INGAA also proposed that PHMSA modify § 190.5(c) to provide that service by mail is complete upon actual receipt and not upon mailing, as is stated in the current regulatory language. INGAA referenced certain sections of Part 190 in which the response time frame is triggered by respondent’s receipt of the relevant document, and other sections where the response period seems to be triggered by mailing. To avoid shortening operators’ response times and to establish consistency throughout Part 190, INGAA suggested that PHMSA adopt service upon receipt as the more equitable option.

Response: With regard to designating an individual for service, PHMSA notes that most operators already include the name of a senior executive officer on their annual reports. In response to the comments, however, PHMSA is considering changes to the annual reporting forms to allow all operators to

designate a senior executive for the specific purpose of service of enforcement actions. Changes to the annual reporting form would be proposed in a future rulemaking action. In the meantime, as an internal policy, PHMSA now advises that all official notices of enforcement action be addressed to the most senior executive officer (e.g., President or Chief Executive Officer). PHMSA believes this is an appropriate mechanism for ensuring enforcement notices are served on an operator.

With regard to when service is effective, there are certain response deadlines in Part 190 that are triggered upon actual receipt of the document, even though service itself is effective upon mailing by certified mail. For example, a respondent has 30 days from receipt to respond to a notice of probable violation and 20 days from receipt of a final order to pay an assessed civil penalty. By comparison, a respondent has 20 days from service to file a petition for reconsideration under § 190.215 and 10 days from service to request a hearing on a corrective action order under § 190.233. In response to the comment, PHMSA is amending § 190.243 (formerly § 190.215) and § 190.233 to clarify that the filing periods run from receipt and not the date of mailing. Service of the notice or order in an enforcement proceeding by certified mail will continue to be effective upon mailing, which is consistent with the manner in which other Federal agencies serve such documents. Based on these amendments, PHMSA is not amending § 190.5(c) in the manner suggested by the comment. PHMSA is, however, amending the regulation to remove references to registered mail as that method of service is not presently used.

4. Subpoenas; Witness Fees (§ 190.7)

PHMSA proposed to amend § 190.7(a) to clarify that the agency is authorized by statute to issue subpoenas for any reason to carry out its duties at any time, both during the investigative phase of an enforcement action and pursuant to a hearing. PHMSA also proposed to amend § 190.7(d) to harmonize the service of subpoenas with the service of other documents under § 190.5 to reflect that service by certified mail is complete upon mailing.

Comments: No comments were received with respect to § 190.7(a). AOPL/API objected to the proposed amendment to § 190.7(d) on the basis that it would be inconsistent with (1) the requirement that mailing be completed by certified or registered mail, both of which require signature of

the recipient; and (2) the provision in § 190.7(d) that service may be achieved by “any method whereby actual notice is given to the person.” AOPL/API asserted that it is inappropriate to deem that service upon mailing achieves “actual notice.”

Response: PHMSA is adopting the amendment to § 190.7(a) as proposed. The amendment to § 190.7(d) was proposed to harmonize service of a subpoena with § 190.5, which states that service is complete upon mailing for documents served by certified mail. Nevertheless, in response to the comments, PHMSA is withdrawing the proposal to amend § 190.7(d). PHMSA is also removing references to registered mail as that method of service is not presently used.

5. Availability of Informal Guidance and Interpretive Assistance (§ 190.11)

The NPRM proposed to remove language that the Office of Pipeline Safety (OPS) would respond to inquiries related to the pipeline safety regulations by the next business day because OPS has not always been able to meet this deadline. PHMSA also proposed to remove § 190.11(a)(2) and (b)(2) to eliminate the availability of informal guidance directly from the Office of Chief Counsel (OCC).

Comments: AOPL/API commented that PHMSA should retain § 190.11(a)(2) and (b)(2) to further regulatory certainty, administrative efficiency, and the conservation of agency resources. The comment stated that the availability of written legal interpretations avoids mistaken regulatory interpretations, allows for the allocation of resources towards pipeline safety, and provides parties outside the regulated community with a potential resource. AOPL/API also noted that PHMSA failed to provide an explanation for the agency’s proposal to withdraw the availability of guidance and legal interpretations from the OCC.

Response: Under § 190.11, OPS provides guidance regarding compliance with the pipeline safety regulations through telephonic and internet assistance, written regulatory interpretations, and responses to questions or opinions concerning pipeline safety issues. The OCC has customarily provided legal assistance through these processes by assisting OPS in the development of written responses to requests for interpretations. PHMSA believes having OPS serve as a single point of contact for guidance and interpretive assistance will permit more efficient handling of these types of requests. The OCC will continue to provide legal assistance through this

process. Accordingly, PHMSA is adopting the amendments as proposed.

Subpart B—Enforcement

6. Purpose and Scope (§ 190.201)

The NPRM proposed to amend § 190.201 to include 33 U.S.C. 1321(j) within the scope of the enforcement procedures enumerated in Subpart B, consistent with section 10 of the 2011 Act. PHMSA received no comments on this proposed amendment. Therefore, PHMSA adopts the amendment as proposed.

7. Inspections and Investigations—Requests for Specific Information (§ 190.203)

In the NPRM, PHMSA proposed to revise § 190.203(c) to allow for the issuance of a request for information (sometimes referred to as a “request for specific information” or “RSI”) at any time, rather than only pursuant to an inspection, and to require operators to respond to such a request no later than 30 days, rather than 45 days.

Comments: AOPL/API commented that PHMSA should implement both a minimum 15 day response period and a maximum 45 day response deadline, or in the alternative, require the Associate Administrator to extend the proposed deadline upon reasonable request of the operator. Given that an RSI could require the collection of complex and voluminous records, necessitating ongoing collaboration with PHMSA, AOPL/API opposed shortening the response deadline.

INGAA expressed a concern that the proposed change would impinge on an operator’s due process rights by unreasonably circumscribing the ability of an operator to collect the requested information within the allotted time. It also stated that a process for contesting the scope and response deadline should be made explicit in the regulations.

Response: Based on its experience, PHMSA continues to believe that in most cases, operators can reasonably respond to an RSI within 30 days. To address the comments, however, PHMSA is adopting an option for the operator to request an extension of time and to propose an alternative submission date. An operator requesting an extension may request that the deadline for submission of the information be stayed while the extension is considered. PHMSA is further changing the proposed language to provide that, while the default response time is 30 days, an RSI may provide another response time. Thus, depending on the scope of the request, the RSI may provide a longer or, if

reasonable, a shorter response time. Due to the time-sensitive nature of some investigations and the need for PHMSA to maintain the maximum information collection authority prescribed by statute, PHMSA declines to adopt a 15-day minimum response period. Finally, we believe it is unnecessary to adopt a process for contesting an RSI, but will consider any issues on a case-by-case basis.

8. Inspections and Investigations—Obstructing an Investigation (§ 190.203)

In the NPRM, PHMSA proposed to amend § 190.203(e) to implement section 2 of the 2011 Act, which requires operators to afford all reasonable assistance in the investigation of an accident or incident and to make available all records and information that pertain to the accident or incident. The proposed amendment further provides that any person obstructing such an investigation can be subject to civil penalties under § 190.223.

Comments: AOPL/API stated that the proposed amendment does not allow for circumstances where an operator may possess responsive documents that it is either legally barred from disclosing or may decline to provide on the basis that it includes proprietary or confidential information. AOPL/API therefore requested that PHMSA exclude any records and information legally protected or barred from disclosure by Federal or State law or court order.

Response: PHMSA routinely receives proprietary or confidential information from operators related to enforcement actions and is required to screen those documents before releasing them under the Freedom of Information Act. Through these existing controls, which include consultation with the operator before disclosure and an opportunity for the operator to object to disclosure, information that should not be publically disclosed can be protected. Accordingly, PHMSA is adopting the amendment as proposed.

9. Warnings (§ 190.205)

In the NPRM, PHMSA proposed to amend § 190.205 to clarify that an operator may respond to a warning letter. PHMSA also proposed to clarify that a warning may be issued for a probable violation of 33 U.S.C. 1321(j) or a PHMSA order or regulation issued thereunder.

Comments: AOPL/API requested modification of the proposal to permit operators to initiate hearings on warning items and to require that PHMSA address warning items in a final order if contested by a respondent. The

comment reasoned that warning letters can subject a respondent to further enforcement action or influence a civil penalty assessment and therefore, PHMSA should allow for increased due process.

Response: A warning letter or a warning item contained in a notice of probable violation is an allegation that OPS identified a potential issue, which if found in a future inspection, may subject the operator to future enforcement action. Warnings allow an operator to address a potential compliance issue before the next inspection to avoid a potential enforcement action. Warnings are complete upon issuance and PHMSA does not make subsequent findings as to whether the factual allegations in the warning were proven by evidence in the record. Accordingly, a warning by itself is never the basis for a civil penalty or compliance order in the proceeding in which the warning is brought.

An operator may respond to a warning if it chooses by providing additional information. If an operator submits objections to a warning item contained in a notice of probable violation, the final order issued in that case should note the respondent's comments. Again, PHMSA does not adjudicate the warning to determine if the allegations were proven. Accordingly, PHMSA believes it is not necessary to adopt a formal process for addressing warnings. PHMSA is amending the regulation to clarify that an operator may respond to a warning, but no adjudication is conducted on warning items.

10. Amendment of Plans or Procedures (§ 190.206, Redesignated From § 190.237)

The NPRM proposed to redesignate the section governing amendment of plans or procedures from § 190.237 to § 190.206 for organizational purposes. PHMSA did not receive any comments and is adopting the amendment.

11. Notice of Probable Violation (§ 190.207)

PHMSA proposed several amendments to § 190.207, including amending § 190.207(a) to clarify that a notice of probable violation (NOPV) may be issued for a probable violation of 33 U.S.C. 1321(j) or a PHMSA order or regulation issued thereunder. PHMSA also proposed amending § 190.207(c) to clarify that a Regional Director may amend the notice of probable violation prior to issuance of a final order.

Comments: PHMSA did not receive any comments on the proposed

amendments, but received a comment regarding documentation that should be included with an NOPV.

INGAA stated that when serving an NOPV, PHMSA should include the agency's "violation report." The violation report is an inspection report prepared by the Regional Director or inspector in each case to support the NOPV. It contains the evidence of the alleged violation and, if applicable, the identification of factors that influence the proposed civil penalty. Currently, operators may request the violation report at any time following receipt of an NOPV. INGAA encouraged PHMSA to automatically include the violation report when serving the NOPV to promote settlement, encourage early dispute resolution, and provide respondents with pertinent materials at the outset of an enforcement action.

Response: PHMSA has considered the comment by INGAA and continues to agree that respondents should have access to the violation report as early as practicable. PHMSA notes, however, that not all respondents request the violation report in each case. Violation reports can be voluminous, exceeding hundreds of pages particularly if there are copies of the operator's own procedures and records. To save the expense of unnecessarily duplicating and sending large volumes of documents in cases where a respondent would not otherwise request them, PHMSA is not adopting INGAA's suggestion to provide the violation report automatically in every case. To ensure the violation report is made available to a respondent as soon as practicable, PHMSA is amending § 190.208 as set forth below to: (1) Clarify that respondents may request the violation report at any time following receipt of an NOPV; and (2) Require the Regional Director to provide the violation report to a respondent within five business days of receiving the request. PHMSA is also amending § 190.209 to reference the violation report as part of the case file that may be requested by the respondent.

12. Response Options (§ 190.208, Redesignated From § 190.209)

PHMSA proposed to amend the response options (formerly at § 190.209) to clarify the available options when responding to an NOPV. In summary, a respondent may choose not to contest an NOPV, to contest an NOPV in writing without requesting a hearing, or to request a hearing. The NPRM also proposed to correct a cross-reference in the regulation.

Comments: INGAA requested several changes to the regulation, including

adding an option to respond in writing to compliance order cases where the respondent does not request a hearing, and an option for a respondent to request the execution of a consent order under § 190.219 when the NOPV proposes a civil penalty.

INGAA requested that a respondent have 30 days from receipt of the evidentiary material to submit its written response. Alternatively, INGAA requested that a respondent receive all evidentiary material within two business days of its request.

Response: For organizational purposes, PHMSA is redesignating this regulation as § 190.208. The rule clarifies that an operator may contest any NOPV in writing with or without requesting a hearing. As to INGAA's suggestion that PHMSA explicitly allow for the execution of a consent order in civil penalty cases, PHMSA declines to adopt a formal regulation accepting offers of settlement in civil penalty cases for the reason stated below under § 190.219.

As to INGAA's request to amend the response period or require evidentiary material within two business days, PHMSA notes that such evidentiary material will be contained in the violation report, which the Regional Director will provide to a respondent within five business days of receiving a request. If a respondent in a particular case believes additional time is necessary to respond following receipt of the violation report, the respondent may submit a timely request in writing to the Regional Director explaining the reason for the extension request. Accordingly, PHMSA believe it is unnecessary to adopt the changes to the response deadline suggested by the commenter.

13. Case File (§ 190.209, New Section)

The NPRM did not propose a new regulation to describe the case file in an enforcement proceeding, but multiple commenters requested certain documents be made part of the case file available to the respondent. In particular, INGAA commented that in order for PHMSA to prohibit *ex parte* communications and incorporate increased transparency into the decision making process, the regulations must explicitly recognize that the regional recommendation is part of the case file provided to the respondent. In addition, INGAA commented that respondents must be afforded time to review and respond to the recommendation.

AOPL/API commented that, to ensure due process and basic fairness in both the administrative process and upon judicial review, the respondent should

be provided certain case file materials that are not currently provided to the respondent, including (1) the evaluation and recommendation submitted by the Regional Director; (2) the recommended decision submitted by the Presiding Official or attorney from the OCC; and (3) the factual and analytical bases for civil penalties.

Response: PHMSA recognizes that the 2011 Act prohibits *ex parte* communications and that both the regulatory language and practices of the agency must conform. Restrictions on *ex parte* communications are discussed in greater detail under § 190.210.

In light of these comments, PHMSA is creating a new § 190.209 that describes the contents of the case file for each type of enforcement action, including cases involving a notice of amendment issued under § 190.206, NOPV issued under § 190.207, corrective action order issued under § 190.233, and safety order issued under § 190.239. PHMSA is adopting language that explicitly recognizes the region recommendation is part of the case file that is available to a respondent in all cases. As a result of this new section, PHMSA is deleting § 190.213(b), which previously described the contents of the file for cases involving an NOPV.

As to AOPL/API's recommendation that PHMSA provide the Presiding Official's recommended decision submitted to the Associate Administrator, PHMSA considers that document to be an internal and deliberative communication or "draft decision." Consequently, PHMSA is not amending the regulations to provide the recommended decision. As for the actual and analytical bases for civil penalties, PHMSA notes that the violation report, which may be requested in all cases, includes the identification of the assessment factors that influence the proposed civil penalty in a given case. By reviewing the violation report, a respondent will be able to apprehend and respond to those factors. In addition, PHMSA currently provides, upon request, a general outline of how civil penalties are calculated.

14. Separation of Functions (§ 190.210, New Section)

To implement section 20 of the 2011 Act, PHMSA proposed a new § 190.210 that explains the separation of functions between enforcement personnel, who are involved in the investigation and prosecution of an enforcement case, and personnel who make (or assist in making) findings and determinations. The section also proposed to prohibit *ex*

parte communications in enforcement cases.

Comments: PHMSA received multiple comments on this proposal. First, INGAA suggested that § 190.210(a) should delineate the Presiding Official's adjudicative role by specifically providing that, in cases where a hearing is held, the Presiding Official will not be engaged in any investigative or prosecutorial functions.

Second, INGAA commented that proposed § 190.210(b) did not fully extend the 2011 Act's *ex parte* provision to attorneys from the OCC who prepare recommended decisions in non-hearing cases. INGAA suggested a modification to § 190.210(b) that would explicitly reference attorneys who prepare such recommended decisions.

Third, INGAA commented that when rendering a decision in hearing cases, the Associate Administrator should consider only the NOPV, the operator's response, materials presented at a hearing, the hearing transcript, and the recommended decision. Any other communications or reports between decisional employees and non-decisional employees would impinge on basic due process principles. However, INGAA acknowledged that these communications could be allowed in certain instances, particularly where respondents are afforded access and an opportunity to respond.

INGAA also suggested that PHMSA should revise the language of the *ex parte* prohibition proposed in § 190.210(b) to include remarks concerning a respondent's past conduct or credibility. INGAA proposed PHMSA change the proposed "information that is material to the question to be decided in the proceeding material" to "the facts, evidence, and legal arguments in the proceeding, the merits of the case, and the respondent's credibility and past conduct."

Lastly, AOPL/API requested that PHMSA emphasize in the regulations, including § 190.207(a), that Regional Directors do not serve in an advisory capacity for the agency.

Response: With regard to the first comment, § 190.210(a) is broad enough to encompass the role of the Presiding Official in hearing cases. In addition, the role of the Presiding Official is more fully addressed under § 190.212, which states that the Presiding Official may not be engaged in any prosecutorial or investigative functions under this subpart. Accordingly, PHMSA believes it is unnecessary to explicitly reference the Presiding Official in § 190.210(a).

In response to INGAA's second comment on *ex parte* communications, PHMSA is amending § 190.210(b) to

reference attorneys from the OCC who prepare recommended decisions in non-hearing cases. Third, PHMSA is amending § 190.208 to include the Regional Director's recommendation as part of the case file that will be provided to respondents in all cases. This will increase transparency, avoid *ex parte* communications, and promote due process.

With regard to INGAA's final comment, PHMSA believes it is unnecessary to adopt the suggested definition of *ex parte* communications. The language proposed in the NPRM resembles the language in the 2011 Act and is broad enough to encompass any information that could potentially affect the decision, its evidentiary findings, legal rationale, penalty assessments or other determinations. Information concerning a respondent's past conduct, to the extent it resulted in prior violations, may influence a civil penalty, but that information must be contained in the violation report to have any bearing in the case.

Lastly, PHMSA believes the above changes satisfy the comments of AOPL/API. The Regional Director's recommendation does not constitute advice, but is merely a summary of his or her position on the case following receipt of the respondent's evidence and explanations. Such a statement of position, whether labeled a recommendation or otherwise, is consistent with the Region's enforcement and prosecutorial role. Operators will now receive the recommendation in all cases.

15. Hearing—Exchange of Evidentiary Material and Withdrawal (§ 190.211)

PHMSA proposed a number of amendments to § 190.211 to clarify the manner in which informal hearings are conducted. Among the changes, the NPRM proposed to amend: § 190.211(b) to state that a respondent may withdraw a hearing request in writing and, if permitted by the presiding official, supplement the record with a written submission in lieu of a hearing; § 190.211(c) to provide that hearings in civil penalty cases under \$25,000 will be held by telephone conference, unless either party requests an in-person hearing; § 190.211(d) to clarify that all evidentiary material on which OPS intends to rely at a hearing, to the extent possible, must be provided at respondent's request prior to a hearing; and § 190.211(e) to state that a respondent must submit the material it intends to use to rebut the allegation of violation at least 10 calendar days prior to the date of the hearing.

Comments: AOPL/API objected to the proposed language in § 190.211(b), which it stated appeared to authorize the Presiding Official to prevent a respondent from withdrawing a hearing request.

With regard to § 190.211(d) and (e), INGAA commented that the burden of producing evidentiary material was unfairly tilted toward OPS and should be adjusted to allow the respondent an opportunity to review and prepare a response to PHMSA's evidentiary material prior to a hearing. AOPL/API also objected to the proposed hearing submission timelines, allowing OPS to provide case files "to the extent practicable" but requiring the respondent to submit its materials 10 days before a hearing. AOPL/API suggested that OPS submit all evidentiary material, including the case file, within 30 days of a hearing. Under this scenario, in order that respondents can evaluate OPS's evidentiary material, the respondent's submission would be due 10 calendar days prior to a hearing. AGA commented that both parties should be required to submit records that they will rely on prior to a hearing to ensure a complete and efficient hearing.

The THLPSCC recommended approval of the NPRM if PHMSA made modifications consistent with the comments filed in response to the NPRM and principles of: Transparency; completeness/increased formality; timeliness/regulatory certainty; and due process. The THLPSCC elaborated that "access and production of relevant information should apply equally to PHMSA staff and the respondent."

Response: To avoid confusion with regard to § 190.211(b), PHMSA is clarifying that a respondent may withdraw a hearing request and provide a written response.

With regard to § 190.211(d) and (e), PHMSA notes that a respondent will be able to request the evidentiary material in the case (i.e., the violation report) well in advance of a hearing under §§ 190.208 and 190.209. It is rare that a Region has any additional evidentiary material to provide prior to the hearing that is not already contained in the violation report. Accordingly, PHMSA believes it is unnecessary to adopt the suggestion to require OPS to submit its case file and evidentiary material 30 days in advance of a hearing. However, to further guarantee that access to, and production of, relevant information applies equally to both parties, PHMSA is amending § 190.211(d) to provide that both the respondent and OPS must submit all evidentiary material 10 days prior to a hearing unless the Presiding

Official sets a different deadline or waives the deadline for good cause. Again, since the violation report is available to the respondent soon after receiving an NOPV, there will rarely be any additional evidentiary material to be provided by OPS. These changes should address the comments regarding fairness and equanimity.

16. Hearing—Formality (§ 190.211)

As part of the clarification and reorganization of § 190.211, the NPRM proposed to redesignate § 190.211(d) as § 190.211(f) and to clarify that: The hearing is conducted informally; the Presiding Official regulates the course of the hearing and gives each party an opportunity to participate; and after the evidence has been presented, the Presiding Official may permit discussion on the issues under consideration.

Comments: AOPL/API commented that the seriousness of hearing cases and the need to compile a detailed and accurate record for potential judicial review should require a measure of formality for hearings.

INGAA proposed that PHMSA should include an option for operators to elect a formal hearing before an Administrative Law Judge (ALJ) "where warranted by the size and complexity of the case." INGAA acknowledged that, while the current hearing process works well for the majority of cases, ALJ hearings would advance due process in certain complex cases with large civil penalties by further separating the decision maker from those performing investigative duties and harmonizing pipeline enforcement with hazmat enforcement, which allows for ALJ hearings.

INGAA also requested that, alternatively, in large or complicated hearing cases, the parties be allowed to present oral arguments directly to the Associate Administrator during his or her review of a recommended decision, rather than having the Associate Administrator decide a case solely on the basis of the Presiding Official's recommendation.

Finally, AOPL/API commented that the proposed § 190.211(f) states that the Presiding Official "may" permit post-evidentiary discussion, in contrast to the original regulation that states post-evidentiary discussion must be permitted.

Response: PHMSA acknowledges that respondents have an interest in proceedings that reflect both the complexity of the case and the amount of the civil penalty or corrective action. Despite referring to pipeline enforcement hearings as "informal," the

hearings actually follow a standard process and protocol that protects a respondent's rights. The process allows for complete written briefing of the issues both before and after the hearing, representation by counsel, production of evidence, testimony by witnesses, and cross-examination. Respondents may also make arrangements for their hearing to be transcribed for the case file. For these reasons, PHMSA believes it is unnecessary to adopt additional procedures to make the hearing process more formal.

With regard to the use of ALJ's specifically, PHMSA believes the existing process adequately addresses the due process concerns even in the most complex cases. Over the years, PHMSA has dealt successfully with complex cases involving large civil penalties and amassed considerable institutional knowledge in rendering decisions in these types of cases. By referring cases to an ALJ, the benefit of the informal nature of pipeline hearings would be undermined to the detriment of the timely resolution of pipeline safety cases. PHMSA declines to adopt INGAA's proposal and will continue to render all decisions in hearing cases as set forth in § 190.211.

As for INGAA's alternate proposal, under which the parties would be allowed to present an oral argument directly to the Associate Administrator, PHMSA believes the current process already develops a full and complete record that is used by the Presiding Official in reaching an independent recommended decision. The recommended decision summarizes and analyzes the respondent's arguments, and the Associate Administrator uses this recommended decision as the basis for issuing a final order. In PHMSA's view, adding additional oral arguments directly before the Associate Administrator would add little to the parties' previous submissions. PHMSA therefore declines to adopt this proposal.

With regard to § 190.211(f), in response to the comment PHMSA is revising the regulation to clarify that the Presiding Official will permit reasonable discussion of the issues.

17. Hearing—Transcripts (§ 190.211)

In the proposed § 190.211(g), PHMSA sought to adopt into regulation the current practice of permitting respondents to arrange for a hearing to be recorded or transcribed at their own cost. The paragraph also repeated language in the current regulation that PHMSA does not prepare a detailed record of a hearing.

Comments: AOPL/API commented that the statement in the regulation that PHMSA does not prepare a detailed record of the hearing is unnecessary and creates a concern regarding the quality of the record maintained by the agency for a potential judicial appeal.

Response: PHMSA is removing the statement at issue. The case file maintained by PHMSA in each enforcement proceeding is now specified in § 190.209. The rule also clarifies that a respondent must notify PHMSA in advance of its intent to transcribe the hearing. Finally, the rule clarifies that a respondent has the sole option of arranging for a court reporter to prepare a written transcript of a hearing.

18. Hearing—Recommended Decision (§ 190.211)

As part of the clarification and reorganization of § 190.211, the NPRM proposed to redesignate § 190.211(j) as § 190.211(i) and to clarify that the Presiding Official's recommended decision is forwarded to the Associate Administrator for issuance of a decision and order.

Comments: INGAA stated that this section should include a prohibition on sharing drafts between the Presiding Official and any Regional Director, PHMSA attorney, or other PHMSA personnel, except as needed for technical or engineering clarification. Furthermore, reflecting *ex parte* concerns, this provision should provide that non-decisional employees may not communicate, comment, or otherwise participate with the Presiding Official in drafting a recommended decision, which would violate the prohibition on private recommendations to the Presiding Official by the Regional Directors.

AOPL/API commented that this subsection should include a targeted timeline for the Presiding Official's recommended decision and proposed that the language be further amended to state that the decision will be issued within 30 calendar days of the hearing.

Response: PHMSA believes that the new § 190.210 addresses INGAA's comments and, therefore, it would be unnecessary to repeat those restrictions in § 190.211. Under the separation of functions outlined in § 190.210, PHMSA prohibits the Presiding Official's recommended decision to be viewed by, shared with, or otherwise commented on by Regional Directors, other PHMSA staff attorneys, or other PHMSA employees who are involved in the investigation or prosecution of the case.

PHMSA finds it would be impractical to adopt a 30-day target time for

issuance of a decision following a hearing. The parties to a hearing are generally allotted time following the hearing to submit additional information. Until these materials are received, the record remains open. Also, hearing cases vary widely in complexity, which prevents establishment of a uniform deadline for the issuance of all recommended decisions. The internal workload of the agency also varies, according to fluctuating caseloads and other priorities. It is therefore impractical to establish a fixed date for the issuance of all hearing cases. Accordingly, PHMSA declines to adopt this proposal. Notwithstanding, PHMSA recognizes the importance of issuing cases in a timely manner and has internal processes to manage its caseload.

19. Presiding Official, Powers, and Duties (§ 190.212, New Section)

PHMSA proposed a new § 190.212 that would describe the function of the Presiding Official. Among other things, the proposed regulation explained that the Presiding Official is an attorney on the staff of the Deputy Chief Counsel who is not engaged in any investigative or prosecutorial functions, such as the issuance of a notice under this subpart. It also explained that if the designated presiding official is unavailable, the Deputy Chief Counsel may delegate the powers and duties specified in this section to another attorney in the Office of Chief Counsel with no prior involvement in the matter to be heard who will serve as the presiding official.

Comments: INGAA and AOPL/API both commented that the proposal to permit a substitute presiding official should be consistent with the 2011 Act, which states that the Presiding Official may not be engaged in any investigative or prosecutorial functions. INGAA also stated that this section should allow for a respondent to request recusal of the Presiding Official.

Response: Based on the comments, PHMSA is revising § 190.212 to state that any substitute Presiding Official may not be engaged in any prosecutorial or investigative functions under 49 CFR Part 190. As to INGAA's proposal that PHMSA adopt a process for requesting recusal, PHMSA declines to adopt a formal process given that it will be rare to recuse the Presiding Official. The OCC will, however, deal with any potential recusals on a case-by-case basis.

20. Final Order (§ 190.213)

The NPRM proposed several amendments to § 190.213. Among them, PHMSA proposed to amend

§ 190.213(b)(5) and to add § 190.213(b)(6) to clarify that the recommended decision prepared by the Presiding Official (in cases involving a hearing) or the attorney from the OCC (in cases not involving a hearing) is forwarded to the Associate Administrator for issuance of a final order.

PHMSA also proposed to remove § 190.213(e), which stated that it is the Associate Administrator's policy to issue final orders expeditiously and to provide notice to respondents in cases where substantial delay is expected.

Comments: With regard to § 190.213(b), AOPL/API commented that the recommended decision submitted by the Presiding Official or attorney from the OCC should be made a part of the case file provided to the respondent.

With regard to § 190.213(e), INGAA commented that the rule should include a target timeline for the issuance of final orders in hearing cases, namely within 180 days of a hearing or closure of the record in a non-hearing case. AOPL/API also stated that PHMSA should adopt a specific timeline and proposed a 180-day target for issuance of a final order. The comments generally expressed concerns with PHMSA's lack of timely agency action and the attendant creation of regulatory uncertainty and potential hardship to individual operators, particularly where facilities have been removed from service.

Response: For the reasons stated under § 190.209, PHMSA declines to specify in the regulation that respondents will receive the recommended decision submitted to the Associate Administrator by the Presiding Official or attorney from the OCC. PHMSA is clarifying the amendment and adopting it at § 190.213(a).

With regard to establishing timelines for issuance of final orders, as explained above, PHMSA has established internal guidelines to ensure that enforcement orders are issued in a timely manner. PHMSA will continue this approach rather than establishing a fixed deadline in the regulations. In response to the comments, PHMSA is withdrawing the proposal to delete the existing regulatory language that allows a respondent to request notice of the date by which action will be taken on an enforcement case whenever there has been a substantial delay. The provision is being redesignated as § 190.213(b).

21. Compliance Orders Generally (§ 190.217)

PHMSA proposed to amend § 190.217 to clarify that compliance orders may be

issued for violations of 33 U.S.C. 1321(j) or any regulation or order issued thereunder by PHMSA. No comments were received in response to this proposal. Accordingly, PHMSA is adopting the amendment as proposed.

22. Consent Order (§ 190.219)

PHMSA proposed to amend § 190.219 to provide that PHMSA and a respondent may execute a consent agreement for cases involving corrective action orders and safety orders, in addition to compliance orders. The NPRM also proposed to add § 190.219(c) to require notification when resolving a corrective action order in accordance with 49 U.S.C. 60112(c).

Comments: INGAA and AOPL/API requested that PHMSA further expand § 190.219 to permit the execution of consent orders in cases involving a civil penalty. INGAA also commented that the regulated community would benefit from additional guidance on PHMSA's settlement process and the issuance of relevant procedures.

Response: While PHMSA is not precluded from engaging in settlement to resolve any enforcement case, including those involving civil penalties, it is not the agency's practice to negotiate over civil penalty amounts. Therefore, PHMSA is not listing civil penalty cases in § 190.219. With regard to settlement guidance, PHMSA is considering the request to develop such guidance.

23. Civil Penalties Generally (§ 190.221)

PHMSA proposed to amend § 190.221 to provide that PHMSA may assess civil penalties for violations of 33 U.S.C. 1321(j) or any regulation or order issued thereunder by PHMSA.

Comments: AOPL/API commented that PHMSA should clarify that penalties assessed under 33 U.S.C. 1321(j) are subject to the limits set forth in 33 U.S.C. 1321(b)(6) rather than the limits in 49 U.S.C. 60122.

With regard to civil penalties in general, INGAA stated that PHMSA should distribute the methodology it uses to calculate civil penalties. Through a policy statement, INGAA suggested that PHMSA could bring transparency to the process and improve respondent's understanding of the general process.

Response: PHMSA is amending § 190.223 by adding a new paragraph (b) that specifies the penalties assessed for violations of 33 U.S.C. 1321(j) are set forth in 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

With regard to civil penalty methodology, PHMSA explains its penalty calculation process primarily

through the violation report, which defines and then applies the statutory penalty assessment factors to the alleged facts of the case. Each final order also explains how the factors ultimately determined the assessed penalty. In addition, PHMSA currently provides, upon request, a general outline of how civil penalties are calculated.

24. Maximum Penalties (§ 190.223)

PHMSA proposed to amend § 190.223(a) to clarify that the term "civil penalty" refers to "administrative" civil penalties, and to increase the maximum penalty from \$100,000 to \$200,000 for each violation, and the maximum penalty for a related series of violations from \$1,000,000 to \$2,000,000, in conformance with the 2011 Act. PHMSA also proposed to delete §§ 190.223(b), 190.223(c), and 190.229(b) to remove obsolete civil and criminal penalty provisions for violations involving offshore gathering lines.

Comments: AOPL/API and INGAA requested that PHMSA clarify that the new penalty maximums apply only to those violations that occur after January 3, 2012, the date of the 2011 Act enactment.

Response: PHMSA will apply the new maximums only for violations that occur after January 3, 2012. PHMSA is deleting §§ 190.223(b) and 190.229(b) as proposed, but is not deleting § 190.223(c) as that paragraph concerns LNG standards, not offshore gathering lines, and was unintentionally proposed to be removed.

25. Assessment Considerations (§ 190.225)

PHMSA proposed to amend § 190.225(a) to remove paragraph (a)(4) relating to "ability to pay" as a penalty assessment factor to conform to the 2011 Act. PHMSA did not receive any comments on this proposal. Accordingly, the proposal is adopted.

26. Payment of Penalty (§ 190.227)

PHMSA proposed to amend § 190.227(a) to allow penalties under \$10,000 to be paid via <https://www.pay.gov> and to provide the correct address. No comments were received in response to this proposal. Accordingly, PHMSA is adopting the amendment.

27. Corrective Action Orders (§ 190.233)

The 2011 Act required PHMSA to promulgate regulations "ensuring expedited review" of any corrective action order (CAO), and defining "expedited review." In the NPRM, PHMSA proposed that a respondent may obtain expedited review, either

through a written response or a request for a hearing under § 190.211 to be held "as soon as practicable." Section 190.233(b) proposed to define expedited review as the process for making a prompt determination on whether the order should remain in effect or be terminated. According to the proposed language, expedited review would be complete upon issuance of a determination of whether the order should remain in effect or be terminated.

PHMSA also proposed to amend the existing regulation to provide that any hearing under this section would be conducted by the Presiding Official in accordance with § 190.211. The NPRM proposed to remove language stating that the Presiding Official submits a recommendation to the Associate Administrator within 48 hours of the conclusion of a hearing to conform to actual practice. Instead, the NPRM proposed that the Presiding Official will submit a recommendation "expeditiously." Lastly, PHMSA proposed to amend § 190.211(f)(1) to clarify that a CAO must include a finding that a facility is or would be hazardous to life, property, or the environment.

Comments: INGAA commented that, commensurate with the need for prompt agency action concerning CAOs issued without notice, PHMSA should address three timing elements. Specifically, INGAA recommended the following specific changes: (1) Retain the 48-hour requirement for the Presiding Official to present a recommendation to the Associate Administrator as to whether a hazardous condition exists requiring the expeditious issuance of a CAO; (2) establish a specific maximum period for the Associate Administrator to supersede, uphold, amend, or rescind a CAO issued under § 190.233(b); and (3) impose a "standard of promptness" on the termination of a CAO, especially in those circumstances where the CAO imposes a significant reduction to pipeline service. In addition, INGAA also requested that PHMSA state in § 190.233 that it will provide a copy of the case file and CAO data report, along with the CAO.

AOPL/API emphasized the potential for deleterious impacts to affected communities and operators from pipeline shutdowns and encouraged PHMSA to adopt clear timelines for setting hearing dates and rendering decisions on emergency CAOs. AOPL/API proposed that PHMSA modify § 190.233 to state that: (1) The agency will hold a hearing within 15 calendar days of issuing a CAO, unless the respondent either waives this right or

requests a later hearing date; and (2) the agency will issue a decision within 15 calendar days following a hearing, unless it issues a “notice showing cause for an extension” and, after issuing such notice, renders a decision within 15 calendar days. AOPL/API questioned PHMSA’s proposal to remove the 48-hour deadline for the Presiding Official to provide a recommendation to the Associate Administrator, arguing that the proposal runs counter to the 2011 Act’s intent to require the issuance of expeditious decisions and industry’s preference for more definitive timelines. AOPL also commented that the proposed regulation did not address the circumstances in which a CAO may be amended.

AGA proposed that PHMSA modify § 190.233 to institute more definitive and quantitative timelines following issuance of an emergency CAO. Under AGA’s proposal, unless the respondent requests a later date and demonstrates need, a hearing should be held within 15 days of issuing a CAO and a decision issued within 15 days of the hearing, unless the agency demonstrates a need for the extension and provides a later date for issuance of the order.

Response: PHMSA acknowledges the need to establish promptness in the issuance, administration, and hearing of CAOs, particularly when an order is issued without prior notice and opportunity for a hearing. Existing regulations for the issuance of a CAO without prior notice acknowledge the extraordinary nature of such an order by requiring that OPS must first make a determination that “failure to [issue an order] would result in the likelihood of serious harm to life, property, or the environment.” This determination is generally only made when OPS finds after an accident or incident that a pipeline facility poses a risk of serious harm without immediate corrective action measures. Following issuance of such an order, the agency provides an operator with an opportunity for a prompt hearing and timely decision.

In PHMSA’s experience, the circumstances of each case, including the need to coordinate with other Federal agencies and State officials and cooperation of the operator in providing information, may vary widely. The interplay of these factors influences the amount of time needed to schedule a hearing date and to issue a final determination. As some of these circumstances are outside of the agency’s control, PHMSA believes it would be imprudent to establish hard deadlines in the regulations. Notwithstanding, in response to the comments, PHMSA is adopting a target

for hearings regarding CAOs issued without notice to be held within 15 days of receipt of the respondent’s request, which is consistent with PHMSA’s internal policy to hold CAO hearings and issue decisions in an expeditious manner. Likewise, PHMSA is adopting a target for the Presiding Official’s post-hearing recommended decision to be submitted to the Associate Administrator within five business days of the hearing.

With regard to the comment concerning the case file and CAO data report, PHMSA is amending § 190.209 to clarify that a respondent may request these materials at any time. Although not previously referenced in Part 190, the CAO data report is a preliminary collection of facts usually compiled during an OPS investigation of an accident or incident, which assists the agency in deciding whether a CAO should be issued. The data report, if one is prepared, will be made available as part of the case file.

With regard to the comment concerning amendment of a CAO, PHMSA is adopting language in § 190.233(c)(5) to clarify that a CAO may be amended as a result of the expedited review. Finally, PHMSA is amending § 190.233(c)(2) to clarify that the response period for requesting a hearing runs from the respondent’s receipt of the notice or order.

28. Safety Orders (§ 190.239)

The NPRM proposed to amend § 190.239 to clarify that an operator may petition for reconsideration of a safety order. The amendment would also properly format the existing headings of each lettered paragraph in the regulation. PHMSA did not receive any comments on this proposal and is adopting the amendments.

29. Finality (§ 190.241, New Section)

The NPRM proposed to delete § 190.213(d), which formerly defined final orders as final agency action except as provided by § 190.215. The intended effect of this and a related amendment to § 190.215 would have required operators to file a petition for reconsideration before seeking judicial review.

Comments: Generally, the commenters opposed this proposal and contended that the Administrative Procedure Act (5 U.S.C. 704) requires agency action to be considered final unless there is an opportunity for review that renders the action inoperable during the agency review.

INGAA stated that PHMSA should eliminate the mandatory petition process and restore petitions for

reconsideration as an elective process. AOPL/API similarly stated that unless the entirety of an administrative order is stayed pending the agency’s consideration of the petition for reconsideration, the proposed language violates the Administrative Procedure Act. AGA commented that, without staying the entirety of an order, PHMSA cannot establish the filing of a petition for reconsideration as a prerequisite to judicial review. AGA further stated that the proposed amendment places a “double burden” on operators in that it continues to enforce final agency orders while barring judicial review until the agency completes its review.

Response: Having considered the comments, PHMSA is withdrawing the proposed amendment. Petitions for reconsideration will remain an elective process. For organizational purposes, PHMSA is deleting § 190.213(d) pertaining to final orders, and is creating a new § 190.241 to address final agency action in all cases. Under § 190.241, unless a petition for reconsideration is filed, final administrative action occurs upon issuance of an order directing amendment issued under § 190.206, a final order issued under § 190.213, a safety order issued under § 190.239, and a corrective action order issued under § 190.233.

30. Petitions for Reconsideration (§ 190.243, Redesignated From § 190.215)

The NPRM proposed to amend § 190.215, relating to petitions for reconsideration by redesignating the section and by expanding its scope to cover final orders, orders directing amendment, safety orders, and corrective action orders. It also proposed to allow 30, rather than 20, calendar days from service of an order to file a petition for reconsideration, and proposed to specify the filing period and standard of judicial review under 49 U.S.C. 60119. In addition, as mentioned above, the NPRM would have required that a respondent file a petition to exhaust its administrative remedies.

Comments: INGAA proposed that PHMSA adopt three amendments to the petition procedures, including: (1) That petitions will be reviewed by an individual other than the Associate Administrator and independent of his or her line of authority; (2) that the independent reviewer and the Associate Administrator be prohibited from communicating about the case, including references to the respondent’s past conduct or the credibility of its witnesses; and (3) that the prohibition

against repetitious arguments be eliminated. INGAA also argued that PHMSA should specifically state that petitions for reconsideration are deemed denied if not acted upon within 90 days.

AOPL/API commented that the proposed paragraphs (c) and (g) would conflict, as the former would prohibit a respondent from raising repetitious arguments in a petition for reconsideration, and the latter would state that failure to raise an issue will deny the respondent the ability to raise that issue on appeal.

Response: For organizational purposes, PHMSA is redesignating this regulation at § 190.243. As noted above, PHMSA is withdrawing the proposal to require a petition for reconsideration be filed before seeking judicial review. PHMSA is also deleting language from the regulation that prohibits the Associate Administrator from considering repetitious information, arguments, or petitions. PHMSA is removing this language to clarify that the Associate Administrator will reconsider his or her original decision based on the information and arguments presented at the time the petition was filed. PHMSA is also amending the regulation to reflect that, when a petition is filed, the decision on the petition is the final administrative action.

PHMSA is also amending the proposed deadline for filing a petition for reconsideration. In light of the comments received regarding service under § 190.5, PHMSA is amending the regulation to require that any petition for reconsideration filed under § 190.243 be received within 20 days of the respondent's receipt of the order. This is an expansion of the existing regulation, which requires the petition to be filed 20 days from service of the order (i.e., when the order is mailed). PHMSA believes it is more equitable to base the deadline on when the order is received rather than when it was mailed, as suggested by the comments discussed under § 190.5.

With regard to the comment by INGAA that petitions should be reviewed by an individual other than the Associate Administrator, PHMSA continues to believe the current process is the most appropriate way to reconsider a decision. The Associate Administrator is the official most familiar with the original order and is in the best position to reconsider his or her decision. Accordingly, PHMSA is not adopting the suggested change.

Likewise, PHMSA is not adopting the suggestion to deem all petitions denied if not decided within 90 days. While 90 days may be reasonable to decide many

petitions for reconsideration, other cases may require more time to decide. It is the policy of PHMSA to issue decisions on reconsideration expeditiously, and PHMSA believes it is in everyone's interest to have a reasoned decision rather than an automatic denial.

Finally, PHMSA has reconsidered and is withdrawing the proposal to include corrective action orders as an agency action that can be petitioned for reconsideration. Due to the fact that corrective action must be taken by the respondent as soon as the order is issued to address the hazardous condition, most immediate actions will have already been completed by the time any petition for reconsideration is filed and decided. Moreover, operators may already seek review of a corrective action order issued without notice, after which PHMSA will issue a decision confirming, amending, or terminating the order. A petition for reconsideration of the order would only duplicate the review already available under § 190.233.

Subpart C—Criminal Enforcement (New Subpart)

31. Criminal Penalties Generally (§ 190.291, Redesignated From § 190.229)

PHMSA proposed to redesignate Subpart C—Procedures for Adoption of Rules as Subpart D and to create a new Subpart C—Criminal Enforcement. Existing provisions in Subpart B at §§ 190.229 and 190.231 were proposed to be redesignated to the new Subpart C at §§ 190.291 and 190.293, respectively. No comments were received in response to this proposal. Accordingly, PHMSA is implementing the redesignation as proposed.

32. Referral for Prosecution (§ 190.293, Redesignated From § 190.231)

In addition to redesignating § 190.231 as § 190.293, PHMSA is also amending § 190.293 to clarify that if a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under § 190.291, the employee reports it to the OCC and to his or her supervisor. The Chief Counsel may refer the report to OPS for investigation. If appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

Subpart D—Procedures for Adoption of Rules (Redesignated From Subpart C)

33. Petitions for Extension of Time To Comment (§ 190.319)

The NPRM proposed to redesignate Subpart C—Procedures for Adoption of Rules as a new Subpart D and to amend § 190.319 to clarify that petitions for extensions of time to file comments on a rulemaking must be addressed to PHMSA, as provided in § 190.309. PHMSA did not receive any comments to this proposal. Accordingly, PHMSA is adopting the proposed changes.

34. Contents of Written Comments (§ 190.321)

The NPRM proposed to remove the requirement in § 190.321 to submit multiple copies of a rulemaking comment. PHMSA did not receive any comments to this proposal and is adopting the proposed change.

35. Hearings (§ 190.327)

The NPRM proposed to delete the phrase “under this part” in § 190.327(b) and insert “under this subpart” to clarify that procedures for a hearing held on a notice of proposed rulemaking do not apply to other types of hearings in Part 190, such as enforcement hearings. PHMSA did not receive any comments on this proposal and is implementing this change as proposed.

36. Petitions for Reconsideration (§ 190.335)

The NPRM proposed to amend § 190.335(a) to remove the requirement to submit multiple copies of a petition for reconsideration of a regulation. PHMSA did not receive any comments on this proposal and is adopting the amendment.

37. Proceedings on Petitions for Reconsideration (§ 190.337)

PHMSA proposed to make certain editorial changes to § 190.337(a) and to remove § 190.337(b), the latter of which stated that the Associate Administrator or Chief Counsel issues a notice of action taken on a petition for reconsideration of a regulation within 90 days of the date the regulation is published in the **Federal Register**.

Comments: INGAA stated that PHMSA should retain the 90-day requirement and “elevate it to a regulatory requirement.”

Response: In response to the comment, PHMSA is withdrawing the proposal to amend § 190.337. PHMSA believes it is unnecessary at this time to change the policy to take action on a

petition for reconsideration within 90 days, unless it is impracticable.

38. Appeals (§ 190.338)

The NPRM proposed to delete § 190.338(c) and thereby remove the requirement to submit multiple copies of an appeal of a denial issued under §§ 190.333 or 190.337. PHMSA did not receive any comments on this proposal and is adopting the amendment.

39. Special Permits (§ 190.341)

The NPRM proposed to amend § 190.341 to clarify that PHMSA may issue an NOPV for a violation of a special permit. The amendment would also properly format the headings at the beginning of each lettered paragraph. PHMSA did not receive any comments on this proposal and is adopting the amendments.

Amendments to Parts 192–199

40. General Provisions (§ 192.603)

The NPRM proposed to amend § 192.603(c) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

41. Plans and Procedures (§ 193.2017)

The NPRM proposed to amend § 193.2017(b) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

42. Procedural Manual for Operations, Maintenance, and Emergencies (§ 195.402)

The NPRM proposed to amend § 195.402(b) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

43. Anti-Drug Plan (§ 199.101)

The NPRM proposed to amend § 199.101(b) by replacing the reference to § 190.237 related to notices of amendment with § 190.206 to reflect the redesignation of that regulation. PHMSA did not receive any comments and is adopting the amendment.

Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Orders 12866 and 13563 require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” PHMSA amended miscellaneous provisions to conform to actual agency practice, make certain corrections to various provisions, and implement mandates from the 2011 Act. PHMSA anticipates the amendments contained in this rule will have no economic impact on the regulated community.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities.

Description of the reasons that action by PHMSA was taken. The 2011 Act required PHMSA to issue regulations implementing certain statutory mandates involving the Presiding Official, the agency’s enforcement practices and procedures, and various other provisions. PHMSA proposed various corrections in order to resolve inconsistencies and errors throughout Part 190.

Succinct statement of the objectives of, and legal basis for, the rule. Under the pipeline safety laws, 49 U.S.C. 60101 et seq., the Secretary of Transportation must prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The Secretary has delegated this authority to the PHMSA Administrator. The rule would implement statutory mandates and make certain other amendments and corrections that improve the agency’s administrative enforcement procedures.

Description of small entities to which the rule will apply. In general, the rule will apply to pipeline operators, some of which may qualify as a small business as defined in section 601(3) of the Regulatory Flexibility Act. Some pipelines are operated by jurisdictions with a population of less than 50,000 people, and thus qualify as small governmental jurisdictions.

Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an

estimate of the classes of small entities that will be subject to the rule, and the type of professional skills necessary for preparation of the report or record. The rule does not impose any new reporting or recordkeeping requirement. However, it affects the timing of certain submissions that must be submitted under the existing regulations. For example, the rule requires operators to respond to an RSI within 30 days. Prior to this, the regulation required operators to respond within 45 days of receiving such a request. Because operators must currently respond to RSIs, the rule does not impose any additional reporting requirements.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the rule. PHMSA is unaware of any duplicative, overlapping, or conflicting Federal rules.

Description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities, including alternatives considered. PHMSA is unaware of any alternatives that would implement the required statutory mandates and other necessary regulatory amendments. Since the rule only implicates PHMSA’s administrative enforcement processes, and is specifically designed to eliminate inconsistencies for regulated entities, no alternatives would result in smaller economic impacts on small entities while at the same time meeting the objectives of the 2011 Act and the agency’s need for a consistent and efficient administrative enforcement process.

Executive Order 13175

PHMSA has analyzed this rule according to the principles and criteria in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This rule imposes no new requirements for recordkeeping and reporting.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of \$100 million, adjusted for inflation, or more in any

one year to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321–4375) requires that Federal agencies analyze final actions to determine whether those actions will have a significant impact on the human environment. The Council on Environmental Quality regulations requires Federal agencies to conduct an environmental review considering (1) the need for the final action; (2) alternatives to the final action; (3) probable environmental impacts of the final action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. *Purpose and Need.* PHMSA is making non-substantive amendments and editorial changes to the pipeline safety regulations. These include:

- Increasing the maximum penalties for violations to \$200,000 per violation per day of violation with a maximum of \$2,000,000 for a related series of violations;
- Amending the existing definition of “presiding official” and adding a new section concerning the presiding official’s powers and duties;
- Permitting a respondent to arrange for a hearing to be transcribed at their cost and requiring them to submit a copy of the transcript;
- Implementing a separation of functions between employees involved with the investigation and prosecution of an enforcement case and those involved in deciding the case;
- Prohibiting ex-parte communications during the formal hearing process;
- Defining the term “expedited review” for reviewing CAOs; and
- Making other technical corrections and updates to address miscellaneous errors and omissions.

2. *Alternatives.* In developing the rule, PHMSA considered two alternatives:

- Alternative 1: Implement statutory mandates. PHMSA has an unqualified obligation to implement the statutory mandates of the 2011 Act. The changes in this rule serve that purpose by amending the pipeline safety regulations in accordance with the 2011 Act.
- Alternative 2: Revise the pipeline safety regulations to incorporate the statutory mandates, other amendments and minor editorial changes previously discussed. PHMSA made certain amendments, corrections and editorial

changes to the pipeline safety regulations. These revisions would eliminate inconsistencies and conform to the agency’s existing practices.

3. *Analysis of Environmental Impacts.* We did not receive any comments to the proposed finding in the NPRM that the proposed non-substantive changes would have little or no impact on the human environment. The final amendments are not substantive in nature and would have little or no impact on the human environment.

PHMSA has concluded that neither of the alternatives discussed above would result in any significant impacts on the environment.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (70 FR 19477), or visit <http://dms.dot.gov>.

Executive Order 13132

PHMSA has analyzed this rule according to Executive Order 13132 (“Federalism”). The rule does not have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. This rule does not impose substantial direct compliance costs on state and local governments. This rule does not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This rule is not a “significant energy action” under Executive Order 13211 (“Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use”). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties.

49 CFR Part 192

Pipeline safety, Fire prevention, Security measures.

49 CFR Part 193

Pipeline safety, Fire prevention, Security measures.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and record-keeping requirements.

49 CFR Part 199

Alcohol abuse, Drug testing.

For the reasons set forth in the preamble, PHMSA amends 49 CFR chapter I, subchapter D as follows:

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

■ 1. The authority citation for Part 190 is revised to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.*; 49 CFR 1.96.

■ 2. The heading of Part 190 is revised to read as set forth above.

PART 190—[AMENDED]

■ 3. In Part 190, revise all references to “Administrator, PHMSA” to read “Administrator”.

■ 4. In Part 190, revise all references to “Chief Counsel, PHMSA” to read “Chief Counsel”.

■ 5. In Part 190, revise all references to “Associate Administrator, OPS” to read “Associate Administrator”.

§ 190.1 [Amended]

■ 6. In § 190.1, paragraph (a) is amended by removing the phrase “49 U.S.C. 5101 *et seq.* (the hazardous material transportation laws)” and adding in its place “33 U.S.C. 1321 (the water pollution control laws)”.

■ 7. In § 190.3, the definitions of “Presiding Official” and “Respondent” are revised and new definitions for “Associate Administrator,” “Chief Counsel,” “Day,” and “Operator” are added in alphabetical order to read as follows:

§ 190.3 Definitions.

* * * * *

Associate Administrator means the Associate Administrator for Pipeline Safety, or his or her delegate.

Chief Counsel means the Chief Counsel of PHMSA.

Day means a 24-hour period ending at 11:59 p.m. Unless otherwise specified, a day refers to a calendar day.

* * * * *

Operator means any owner or operator.

* * * * *

Presiding Official means the person who conducts any hearing relating to civil penalty assessments, compliance orders, orders directing amendment, safety orders, or corrective action orders

and who has the duties and powers set forth in § 190.212.

* * * * *

Respondent means a person upon whom OPS has served an enforcement action described in this part.

* * * * *

■ 8. In § 190.5, paragraphs (a) and (c) are revised to read as follows:

§ 190.5 Service.

(a) Each order, notice, or other document required to be served under this part will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

* * * * *

(c) Service by certified mail or overnight courier is complete upon mailing. Service by electronic transmission is complete upon transmission and acknowledgement of receipt. An official receipt for the mailing from the U.S. Postal Service or overnight courier, or a facsimile or other electronic transmission confirmation, constitutes prima facie evidence of service.

■ 9. In § 190.7, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 190.7 Subpoenas; witness fees.

(a) The Administrator, Chief Counsel, or the official designated by the Administrator to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on his or her own initiative at any time, including pursuant to an inspection or investigation, or upon request and adequate showing by a participant to an enforcement proceeding that the information sought will materially advance the proceeding.

* * * * *

(c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified mail.

(d) Service of a subpoena upon the person named in the subpoena is achieved by delivering a copy of the subpoena to the person and by paying the fees for one day's attendance and mileage, as specified by paragraph (g) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with a person in charge, leaving them at the person's residence

with a person of suitable age and discretion residing there, by mailing them by certified mail to the person at the last known address, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.

(e) When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be achieved by handing them to a designated agent or representative for service, or to any officer, director, or agent in charge of any office of the person, or by mailing them by certified mail to that agent or representative and the fees are made available prior to the return date.

* * * * *

■ 10. Section 190.11 is revised to read as follows:

§ 190.11 Availability of informal guidance and interpretive assistance.

(a) *Availability of telephonic and Internet assistance.* PHMSA has established a Web site and a telephone line to OPS headquarters where information on and advice about compliance with the pipeline safety regulations specified in 49 CFR parts 190–199 is available. The Web site and telephone line are staffed by personnel from PHMSA's OPS from 9:00 a.m. through 5:00 p.m., Eastern Time, Monday through Friday, with the exception of Federal holidays. When the lines are not staffed, individuals may leave a recorded voicemail message or post a message on the OPS Web site. The telephone number for the OPS information line is (202) 366–4595 and the OPS Web site can be accessed via the Internet at <http://phmsa.dot.gov/pipeline>.

(b) *Availability of written interpretations.* A written regulatory interpretation, response to a question, or an opinion concerning a pipeline safety issue may be obtained by submitting a written request to the Office of Pipeline Safety (PHP–30), PHMSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. The requestor must include his or her return address and should also include a daytime telephone number. Written requests should be submitted at least 120 days before the time the requestor needs a response.

■ 11. In § 190.201, paragraph (a) is revised to read as follows:

§ 190.201 Purpose and scope.

(a) This subpart describes the enforcement authority and sanctions exercised by the Associate Administrator for achieving and maintaining pipeline safety and

compliance under 49 U.S.C. 60101 *et seq.*, 33 U.S.C. 1321(j), and any regulation or order issued thereunder. It also prescribes the procedures governing the exercise of that authority and the imposition of those sanctions.

* * * * *

■ 12. In § 190.203, paragraph (b)(6) and paragraphs (c), (e), and (f) are revised to read as follows:

§ 190.203 Inspections and investigations.

* * * * *

(b) * * *

(6) Whenever deemed appropriate by the Associate Administrator.

(c) If the Associate Administrator or Regional Director believes that further information is needed to determine appropriate action, the Associate Administrator or Regional Director may notify the pipeline operator in writing that the operator is required to provide specific information within 30 days from the time the notification is received by the operator, unless otherwise specified in the notification. The notification must provide a reasonable description of the specific information required. An operator may request an extension of time to respond by providing a written justification as to why such an extension is necessary and proposing an alternative submission date. A request for an extension may ask for the deadline to be stayed while the extension is considered. General statements of hardship are not acceptable bases for requesting an extension.

* * * * *

(e) If a representative of the U.S. Department of Transportation inspects or investigates an accident or incident involving a pipeline facility, the operator must make available to the representative all records and information that pertain to the event in any way, including integrity management plans and test results. The operator must provide all reasonable assistance in the investigation. Any person who obstructs an inspection or investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation without good cause will be subject to administrative civil penalties under this subpart.

(f) When OPS determines that the information obtained from an inspection or from other appropriate sources warrants further action, OPS may initiate one or more of the enforcement proceedings prescribed in this subpart.

■ 13. Section 190.205 is revised to read as follows:

§ 190.205 Warnings.

Upon determining that a probable violation of 49 U.S.C. 60101 *et seq.*, 33 U.S.C. 1321(j), or any regulation or order issued thereunder has occurred, the Associate Administrator or a Regional Director may issue a written warning notifying the operator of the probable violation and advising the operator to correct it or be subject to potential enforcement action in the future. The operator may submit a response to a warning, but is not required to. An adjudication under this subpart to determine whether a violation occurred is not conducted for warnings.

■ 14. Add § 190.206 to Subpart B to read as follows:

§ 190.206 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice will specify the alleged inadequacies and the proposed revisions of the plans or procedures and provide an opportunity to respond. The notice will allow the operator 30 days following receipt of the notice to submit written comments, revised procedures, or a request for a hearing under § 190.211.

(b) After considering all material presented in writing or at the hearing, if applicable, the Associate Administrator determines whether the plans or procedures are inadequate as alleged. The Associate Administrator issues an order directing amendment of the plans or procedures if they are inadequate, or withdraws the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator may consider:

- (1) Relevant pipeline safety data;
- (2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;
- (3) The reasonableness of the plans or procedures; and
- (4) The extent to which the plans or procedures contribute to public safety.

(c) An order directing amendment of an operator's plans or procedures prescribed in this section may be in addition to, or in conjunction with, other appropriate enforcement actions prescribed in this subpart.

■ 15. In § 190.207, revise paragraphs (a), (b)(2), and (c) to read as follows:

§ 190.207 Notice of probable violation.

(a) Except as otherwise provided by this subpart, a Regional Director begins an enforcement proceeding by serving a notice of probable violation on a person charging that person with a probable violation of 49 U.S.C. 60101 *et seq.*, 33 U.S.C. 1321(j), or any regulation or order issued thereunder.

(b) * * *
(2) Notice of response options available to the respondent under § 190.208;

* * * * *
(c) The Regional Director may amend a notice of probable violation at any time prior to issuance of a final order under § 190.213. If an amendment includes any new material allegations of fact, proposes an increased civil penalty amount, or proposes new or additional remedial action under § 190.217, the respondent will have the opportunity to respond under § 190.208.

■ 16. Add § 190.208 to Subpart B to read as follows:

§ 190.208 Response options.

Within 30 days of receipt of a notice of probable violation, the respondent must answer the Regional Director who issued the notice in the following manner:

(a) When the notice contains a proposed civil penalty—

(1) If the respondent is not contesting an allegation of probable violation, pay the proposed civil penalty as provided in § 190.227 and advise the Regional Director of the payment. The payment authorizes the Associate Administrator to make a finding of violation and to issue a final order under § 190.213;

(2) If the respondent is not contesting an allegation of probable violation but wishes to submit a written explanation, information, or other materials the respondent believes may warrant mitigation or elimination of the proposed civil penalty, the respondent may submit such materials. This authorizes the Associate Administrator to make a finding of violation and to issue a final order under § 190.213;

(3) If the respondent is contesting one or more allegations of probable violation but is not requesting a hearing under § 190.211, the respondent may submit a written response in answer to the allegations; or

(4) The respondent may request a hearing under § 190.211.

(b) When the notice contains a proposed compliance order—

(1) If the respondent is not contesting an allegation of probable violation, agree to the proposed compliance order. This authorizes the Associate Administrator

to make a finding of violation and to issue a final order under § 190.213;

(2) Request the execution of a consent order under § 190.219;

(3) If the respondent is contesting one or more of the allegations of probable violation or compliance terms, but is not requesting a hearing under § 190.211, the respondent may object to the proposed compliance order and submit written explanations, information, or other materials in answer to the allegations in the notice of probable violation; or

(4) The respondent may request a hearing under § 190.211.

(c) Before or after responding in accordance with paragraph (a) of this section or, when applicable paragraph (b) of this section, the respondent may request a copy of the violation report from the Regional Director as set forth in § 190.209. The Regional Director will provide the violation report to the respondent within five business days of receiving a request.

(d) Failure to respond in accordance with paragraph (a) of this section or, when applicable paragraph (b) of this section, constitutes a waiver of the right to contest the allegations in the notice of probable violation and authorizes the Associate Administrator, without further notice to the respondent, to find the facts as alleged in the notice of probable violation and to issue a final order under § 190.213.

(e) All materials submitted by operators in response to enforcement actions may be placed on publicly accessible Web sites. A respondent seeking confidential treatment under 5 U.S.C. 552(b) for any portion of its responsive materials must provide a second copy of such materials along with the complete original document. A respondent may redact the portions it believes qualify for confidential treatment in the second copy but must provide a written explanation for each redaction.

■ 17. Section 190.209 is revised to read as follows:

§ 190.209 Case file.

(a) The case file, as defined in this section, is available to the respondent in all enforcement proceedings conducted under this subpart.

(b) The case file of an enforcement proceeding consists of the following:

- (1) In cases commenced under § 190.206, the notice of amendment and the relevant procedures;
- (2) In cases commenced under § 190.207, the notice of probable violation and the violation report;
- (3) In cases commenced under § 190.233, the corrective action order or

notice of proposed corrective action order and the data report, if one is prepared;

(4) In cases commenced under § 190.239, the notice of proposed safety order;

(5) Any documents and other material submitted by the respondent in response to the enforcement action;

(6) In cases involving a hearing, any material submitted during and after the hearing as set forth in § 190.211; and

(7) The Regional Director's written evaluation of response material submitted by the respondent and recommendation for final action, if one is prepared.

■ 18. Add § 190.210 to Subpart B to read as follows:

§ 190.210 Separation of functions.

(a) *General.* An agency employee who assists in the investigation or prosecution of an enforcement case may not participate in the decision of that case or a factually related one, but may participate as a witness or counsel at a hearing as set forth in this subpart. Likewise, an agency employee who prepares a decision in an enforcement case may not have served in an investigative or prosecutorial capacity in that case or a factually related one.

(b) *Prohibition on ex parte communications.* A party to an enforcement proceeding, including the respondent, its representative, or an agency employee having served in an investigative or prosecutorial capacity in the proceeding, may not communicate privately with the Associate Administrator, Presiding Official, or attorney drafting the recommended decision concerning information that is relevant to the questions to be decided in the proceeding. A party may communicate with the Presiding Official regarding administrative or procedural issues, such as for scheduling a hearing.

■ 19. Section 190.211 is revised to read as follows:

§ 190.211 Hearing.

(a) *General.* This section applies to hearings conducted under this part relating to civil penalty assessments, compliance orders, orders directing amendment, safety orders, and corrective action orders. The Presiding Official will convene hearings conducted under this section.

(b) *Hearing request and statement of issues.* A request for a hearing must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action, or the

proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of the respondent's right to raise that issue at the hearing. The respondent's request must also indicate whether or not the respondent will be represented by counsel at the hearing. The respondent may withdraw a request for a hearing in writing and provide a written response.

(c) *Telephonic and in-person hearings.* A telephone hearing will be held if the amount of the proposed civil penalty or the cost of the proposed corrective action is less than \$25,000, unless the respondent or OPS submits a written request for an in-person hearing. In-person hearings will normally be held at the office of the appropriate OPS Region. Hearings may be held by video teleconference if the necessary equipment is available to all parties.

(d) *Pre-hearing submissions.* If OPS or the respondent intends to introduce material, including records, documents, and other exhibits not already in the case file, the material must be submitted to the Presiding Official and the other party at least 10 days prior to the date of the hearing, unless the Presiding Official sets a different deadline or waives the deadline for good cause.

(e) *Conduct of the hearing.* The hearing is conducted informally without strict adherence to rules of evidence. The Presiding Official regulates the course of the hearing and gives each party an opportunity to offer facts, statements, explanations, documents, testimony or other evidence that is relevant and material to the issues under consideration. The parties may call witnesses on their own behalf and examine the evidence and witnesses presented by the other party. After the evidence in the case has been presented, the Presiding Official will permit reasonable discussion of the issues under consideration.

(f) *Written transcripts.* If a respondent elects to transcribe a hearing, the respondent must make arrangements with a court reporter at cost to the respondent and submit a complete copy of the transcript for the case file. The respondent must notify the Presiding Official in advance if it intends to transcribe a hearing.

(g) *Post-hearing submission.* The respondent and OPS may request an opportunity to submit further written material after the hearing for inclusion in the record. The Presiding Official will allow a reasonable time for the submission of the material and will specify the submission date. If the material is not submitted within the time prescribed, the case will proceed to final action without the material.

(h) *Preparation of decision.* After consideration of the case file, the Presiding Official prepares a recommended decision in the case, which is then forwarded to the Associate Administrator for issuance of a final order.

■ 20. Add § 190.212 to Subpart B to read as follows:

§ 190.212 Presiding official, powers, and duties.

(a) *General.* The Presiding Official for a hearing conducted under § 190.211 is an attorney on the staff of the Deputy Chief Counsel who is not engaged in any investigative or prosecutorial functions, such as the issuance of notices under this subpart. If the designated Presiding Official is unavailable, the Deputy Chief Counsel may delegate the powers and duties specified in this section to another attorney in the Office of Chief Counsel who is not engaged in any investigative or prosecutorial functions under this subpart.

(b) *Time and place of the hearing.* The Presiding Official will set the date, time and location of the hearing. To the extent practicable, the Presiding Official will accommodate the parties' schedules when setting the hearing. Reasonable notice of the hearing will be provided to all parties.

(c) *Powers and duties of Presiding Official.* The Presiding Official will conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of the proceeding and maintain order. The Presiding Official has all powers necessary to achieve those ends, including, but not limited to the power to:

(1) Regulate the course of the hearing and conduct of the parties and their counsel;

(2) Receive evidence and inquire into the relevant and material facts;

(3) Require the submission of documents and other information;

(4) Direct that documents or briefs relate to issues raised during the course of the hearing;

(5) Set the date for filing documents, briefs, and other items;

(6) Prepare a recommended decision; and

(7) Exercise the authority necessary to carry out the responsibilities of the Presiding Official under this subpart.

■ 21. Section 190.213 is revised to read as follows:

§ 190.213 Final order.

(a) In an enforcement proceeding commenced under § 190.207, an attorney from the Office of Chief Counsel prepares a recommended

decision after expiration of the 30-day response period prescribed in § 190.208. If a hearing is held, the Presiding Official prepares the recommended decision as set forth in § 190.211. The recommended decision is forwarded to the Associate Administrator who considers the case file and issues a final order. The final order includes—

(1) A statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved;

(2) If a civil penalty is assessed, the amount of the penalty and the procedures for payment of the penalty, provided that the assessed civil penalty may not exceed the penalty proposed in the notice of probable violation; and

(3) If a compliance order is issued, a statement of the actions required to be taken by the respondent and the time by which such actions must be accomplished.

(b) In cases where a substantial delay is expected in the issuance of a final order, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

§ 190.215 [Removed and Reserved]

■ 22. Remove and reserve § 190.215.

■ 23. Section 190.217 is revised to read as follows:

§ 190.217 Compliance orders generally.

When a Regional Director has reason to believe that a person is engaging in conduct that violates 49 U.S.C. 60101 *et seq.*, 33 U.S.C. 1321(j), or any regulation or order issued thereunder, and if the nature of the violation and the public interest so warrant, the Regional Director may initiate proceedings under §§ 190.207 through 190.213 to determine the nature and extent of the violations and for the issuance of an order directing compliance.

■ 24. In § 190.219, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 190.219 Consent order.

(a) At any time prior to the issuance of a compliance order under § 190.217, a corrective action order under § 190.233, or a safety order under § 190.239, the Regional Director and the respondent may agree to resolve the case by execution of a consent agreement and order, which may be jointly executed by the parties and issued by the Associate Administrator. Upon execution, the consent order is considered a final order under § 190.213.

* * * * *

(c) Prior to the execution of a consent agreement and order arising out of a corrective action order under § 190.233, the Associate Administrator will notify any appropriate State official in accordance with 49 U.S.C. 60112(c).

■ 25. Section 190.221 is revised to read as follows:

§ 190.221 Civil penalties generally.

When a Regional Director has reason to believe that a person has committed an act violating 49 U.S.C. 60101 *et seq.*, 33 U.S.C. 1321(j), or any regulation or order issued thereunder, the Regional Director may initiate proceedings under §§ 190.207 through 190.213 to determine the nature and extent of the violations and appropriate civil penalty.

■ 26. Section 190.223 is revised to read as follows:

§ 190.223 Maximum penalties.

(a) Any person who is determined to have violated a provision of 49 U.S.C. 60101 *et seq.*, or any regulation or order issued thereunder is subject to an administrative civil penalty not to exceed \$200,000 for each violation for each day the violation continues, except that the maximum administrative civil penalty may not exceed \$2,000,000 for any related series of violations.

(b) Any person who is determined to have violated a provision of 33 U.S.C. 1321(j) or any regulation or order issued thereunder is subject to an administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

(c) Any person who is determined to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed \$50,000, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed \$1,000, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(e) Separate penalties for violating a regulation prescribed under this subchapter and for violating an order issued under §§ 190.206, 190.213, 190.233, or 190.239 may not be imposed under this section if both violations are based on the same act.

■ 27. Section 190.225 is revised to read as follows:

§ 190.225 Assessment considerations.

In determining the amount of a civil penalty under this part,

(a) The Associate Administrator will consider:

(1) The nature, circumstances and gravity of the violation, including adverse impact on the environment;

(2) The degree of the respondent's culpability;

(3) The respondent's history of prior offenses;

(4) Any good faith by the respondent in attempting to achieve compliance;

(5) The effect on the respondent's ability to continue in business; and

(b) The Associate Administrator may consider:

(1) The economic benefit gained from violation, if readily ascertainable, without any reduction because of subsequent damages; and

(2) Such other matters as justice may require.

■ 28. In § 190.227, paragraph (a) is revised to read as follows:

§ 190.227 Payment of penalty.

(a) Except for payments exceeding \$10,000, payment of a civil penalty proposed or assessed under this subpart may be made by certified check or money order (containing the CPF Number for the case), payable to "U.S. Department of Transportation," to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 25770, Oklahoma City, OK 73125, or by wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury, or via <https://www.pay.gov>. Payments exceeding \$10,000 must be made by wire transfer.

* * * * *

Subpart B [Amended]

■ 29. In Subpart B, remove the undesignated center heading "Criminal Penalties".

§ 190.229 [Removed and Reserved]

■ 30. Remove and reserve § 190.229.

§ 190.231 [Removed and Reserved]

■ 31. Remove and reserve § 190.231.

■ 32. In § 190.233, paragraphs (a), (b), (c), (f)(1), and (g) are revised to read as follows:

§ 190.233 Corrective action orders.

(a) *Generally.* Except as provided by paragraph (b) of this section, if the Associate Administrator finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, a particular pipeline facility is or would be hazardous to life, property, or the environment, the Associate Administrator may issue an

order pursuant to this section requiring the operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) *Waiver of notice and expedited review.* The Associate Administrator may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order whenever the Associate Administrator determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. When an order is issued under this paragraph, a respondent that contests the order may obtain expedited review of the order either by answering in writing to the order within 10 days of receipt or requesting a hearing under § 190.211 to be held as soon as practicable in accordance with paragraph (c)(2) of this section. For purposes of this section, the term “expedited review” is defined as the process for making a prompt determination of whether the order should remain in effect or be amended or terminated. The expedited review of an order issued under this paragraph will be complete upon issuance of such determination.

(c) *Notice and hearing:*

(1) Written notice that OPS intends to issue an order under this section will be served upon the owner or operator of an alleged hazardous facility in accordance with § 190.5. The notice must allege the existence of a hazardous facility and state the facts and circumstances supporting the issuance of a corrective action order. The notice must provide the owner or operator with an opportunity to respond within 10 days of receipt.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator of that election in writing within 10 days of receipt of the notice provided under paragraph (c)(1) of this section, or the order under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator’s opportunity for a hearing.

(3) At any time after issuance of a notice or order under this section, the respondent may request a copy of the case file as set forth in § 190.209.

(4) A hearing under this section is conducted pursuant to § 190.211. The hearing should be held within 15 days of receipt of the respondent’s request for a hearing.

(5) After conclusion of a hearing under this section, the Presiding Official

submits a recommended decision to the Associate Administrator as to whether or not the facility is or would be hazardous to life, property, or the environment, and if necessary, requiring expeditious corrective action. If a notice or order is contested in writing without a hearing, an attorney from the Office of Chief Counsel prepares the recommended decision. The recommended decision should be submitted to the Associate Administrator within five business days after conclusion of the hearing or after receipt of the respondent’s written objection if no hearing is held. Upon receipt of the recommendation, the Associate Administrator will proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator issues a corrective action order in accordance with this section, or confirms (or amends) the corrective action order issued under paragraph (b) of this section. If the Associate Administrator does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator withdraws the notice or terminates the order issued under paragraph (b) of this section, and promptly notifies the operator in writing by service as prescribed in § 190.5.

* * * * *

(f) * * *

(1) A finding that the pipeline facility is or would be hazardous to life, property, or the environment.

* * * * *

(g) The Associate Administrator will terminate a corrective action order whenever the Associate Administrator determines that the facility is no longer hazardous to life, property, or the environment. If appropriate, however, a notice of probable violation may be issued under § 190.207.

* * * * *

§ 190.237 [Removed and Reserved]

■ 33. Remove and reserve § 190.237.

■ 34. Section 190.239 is amended by revising the headings of paragraphs (a), (b), (c), (d), (e), and (f), and adding paragraph (g) to read as follows:

§ 190.239 Safety orders.

(a) *When may PHMSA issue a safety order?* * * *

(b) *How is an operator notified of the proposed issuance of a safety order and what are its responses options?* * * *

(c) *How is the determination made that a pipeline facility has a condition that poses an integrity risk?* * * *

(d) *What factors must PHMSA consider in making a determination that a risk condition is present?* * * *

(e) *What information will be included in a safety order?* * * *

(f) *Can PHMSA take other enforcement actions on the affected facilities?* * * *

(g) *May I petition for reconsideration of a safety order?* Yes, a petition for reconsideration may be submitted in accordance with § 190.243.

■ 35. Add § 190.241 to Subpart B to read as follows.

§ 190.241 Finality.

Except as otherwise provided by § 190.243, an order directing amendment issued under § 190.206, a final order issued under § 190.213, a corrective action order issued under § 190.233, or a safety order issued under § 190.239 is considered final administrative action on that enforcement proceeding.

■ 36. Add § 190.243 to Subpart B to read as follows.

§ 190.243 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator for reconsideration of an order directing amendment of plans or procedures issued under § 190.206, a final order issued under § 190.213, or a safety order issued under § 190.239. The written petition must be received no later than 20 days after receipt of the order by the respondent. A copy of the petition must be provided to the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration, East Building, 2nd Floor, Mail Stop E26–105, 1200 New Jersey Ave. SE., Washington, DC 20590 or by email to *phmsachiefcounsel@dot.gov*. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the order should be reconsidered.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons why they were not presented prior to issuance of the final order.

(c) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator otherwise provides, the order, including any required corrective action, is not stayed.

(d) The Associate Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. If the Associate Administrator reconsiders an order under this section, a final decision on

reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, as deemed appropriate.

(e) It is the policy of the Associate Administrator to expeditiously issue notice of the action taken on a petition for reconsideration. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

(f) If the Associate Administrator reconsiders an order under this section, the decision on reconsideration is the final administrative action on that enforcement proceeding.

(g) Any application for judicial review must be filed no later than 89 days after the issuance of the decision in accordance with 49 U.S.C. 60119(a).

(h) Judicial review of agency action under 49 U.S.C. 60119(a) will apply the standards of review established in 5 U.S.C. 706.

Subpart C [Redesignated as Subpart D]

■ 37. Redesignate Subpart C as new Subpart D.

■ 38. Add new Subpart C to read as follows:

Subpart C—Criminal Enforcement

§ 190.291 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder will upon conviction be subject to a fine under title 18, United States Code, and imprisonment for not more than five years, or both, for each offense.

(b) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility, any interstate pipeline facility, or any intrastate pipeline facility used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce (as those terms are defined in 49 U.S.C. 60101 *et seq.*) will, upon conviction, be subject to a fine under title 18, United States Code, imprisonment for a term not to exceed 20 years, or both, for each offense.

(c) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder will, upon conviction, be subject to a fine under

title 18, United States Code, imprisonment for a term not to exceed 1 year, or both, for each offense.

(d) Any person who willfully and knowingly engages in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or without considering location information or markings established by a pipeline facility operator; and

(1) Subsequently damages a pipeline facility resulting in death, serious bodily harm, or property damage exceeding \$50,000;

(2) Subsequently damages a pipeline facility and knows or has reason to know of the damage but fails to promptly report the damage to the operator and to the appropriate authorities; or

(3) Subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product; will, upon conviction, be subject to a fine under title 18, United States Code, imprisonment for a term not to exceed 5 years, or both, for each offense.

(e) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under §§ 190.217, 190.219 or 190.291 if both violations are based on the same act.

§ 190.293 Referral for prosecution.

If a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under § 190.291, the employee reports it to the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, and to his or her supervisor. The Chief Counsel may refer the report to OPS for investigation. If appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

■ 39. Section 190.319 is revised to read as follows:

§ 190.319 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be submitted to PHMSA in accordance with § 190.309 and received by PHMSA not later than 10 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments. A petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is

granted, it is granted to all persons, and it is published in the **Federal Register**.

■ 40. Section 190.321 is revised to read as follows:

§ 190.321 Contents of written comments.

All written comments must be in English. Any interested person should submit as part of written comments all material considered relevant to any statement of fact. Incorporation of material by reference should be avoided; however, where necessary, such incorporated material must be identified by document title and page.

■ 41. In § 190.327, paragraph (b) is revised to read as follows:

§ 190.327 Hearings.

* * * * *

(b) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this subpart. Unless otherwise specified, hearings held under this subpart are informal, non-adversarial fact-finding proceedings, at which there are no formal pleadings or adverse parties. Any regulation issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

* * * * *

■ 42. In § 190.335, paragraph (a) is revised to read as follows:

§ 190.335 Petitions for reconsideration.

(a) Except as provided in § 190.339(d), any interested person may petition the Associate Administrator for reconsideration of any regulation issued under this subpart, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under this subpart and contained in this subpart. The petition must be received not later than 30 days after publication of the rule in the **Federal Register**. Petitions filed after that time will be considered as petitions filed under § 190.331. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

* * * * *

§ 190.338 [Amended]

■ 43. In § 190.338, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

■ 44. Section 190.341 is amended by revising the heading of paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j), and adding paragraph (k) to read as follows:

§ 190.341 Special permits.

(a) *What is a special permit?* * * *

(b) *How do I apply for a special permit?* * * *

(c) *What information must be contained in the application?* * * *

(d) *How does PHMSA handle special permit applications?* * * *

(e) *Can a special permit be requested on an emergency basis?* * * *

(f) *How do I apply for an emergency special permit?* * * *

(g) *What must be contained in an application for an emergency special permit?* * * *

(h) *In what circumstances will PHMSA revoke, suspend, or modify a special permit?* * * *

(i) *Can a denial of a request for a special permit or a revocation of an existing special permit be appealed?* * * *

(j) *Are documents related to an application for a special permit available for public inspection?* * * *

(k) *Am I subject to enforcement action for non-compliance with the terms and conditions of a special permit? Yes.* PHMSA inspects for compliance with the terms and conditions of special permits and if a probable violation is identified, PHMSA will initiate one or more of the enforcement actions under subpart B of this part.

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 45. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

■ 46. In § 192.603, paragraph (c) is revised to read as follows:

§ 192.603 General provisions.

* * * * *

(c) The Associate Administrator or the State Agency that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 *et seq.*) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

■ 47. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

■ 48. In § 193.2017, paragraph (b) is revised to read as follows:

§ 193.2017 Plans and procedures.

* * * * *

(b) The Associate Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 49. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

■ 50. In § 195.402, paragraph (b) is revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) The Associate Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

* * * * *

PART 199—DRUG AND ALCOHOL TESTING

■ 51. The authority citation for Part 199 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 52. In § 199.101, paragraph (b) is revised to read as follows:

§ 199.101 Anti-drug plan.

* * * * *

(b) The Associate Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 *et seq.*)

with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

Issued in Washington, DC, on September 18, 2013, under authority delegated in 49 CFR Part 1.97(a).

Cynthia L. Quarterman,
Administrator.

[FR Doc. 2013-23047 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 392

[Docket Numbers PHMSA-2010-0319 (HM-255) & FMCSA-2006-25660]

RIN 2137-AE69 & 2126-AB04

Highway-Rail Grade Crossing; Safe Clearance

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), and Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA and PHMSA amend the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs), respectively, to prohibit a driver of a commercial motor vehicle or of a motor vehicle transporting certain hazardous materials or certain agents or toxins (hereafter collectively referenced as "regulated motor vehicle") from entering onto a highway-rail grade crossing unless there is sufficient space to drive completely through the grade crossing without stopping. This action is in response to section 112 of the Hazardous Materials Transportation Authorization Act of 1994, as amended by section 32509 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). The intent of this rulemaking is to reduce highway-rail grade crossing crashes.

DATES: This rule is effective October 25, 2013.

ADDRESSES: You may review the final rule, the technical supporting documents, economic analysis, environmental assessment, and public comments for this proceeding identified by Federal Docket Management System Numbers PHMSA–2010–0319 (HM–255) and FMCSA–2006–25660.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: At FMCSA: Mr. Thomas Yager, Driver and Carrier Operations, (202) 366–4325 or MCPSD@dot.gov, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

At PHMSA: Mr. Ben Supko, Office of Hazardous Materials Standards, (202) 366–8553 or phmsa.hmhzmsafety@dot.gov, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Summary of the Final Rule

This action is in response to section 112 of the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA), as amended by section 32509 of MAP–21. The intent of this rulemaking is to reduce highway–rail grade crossing crashes. FMCSA and PHMSA implement the statutory mandate enacted in section 112 of the HMTAA, as amended, by changing the FMCSRs and HMRS, respectively, to prohibit drivers of regulated motor vehicles from entering onto a highway–rail grade crossing unless there is sufficient space to drive completely through the grade crossing without stopping. The Agencies published the notice of proposed rulemaking (NPRM) for this final rule on January 28, 2011 (76 FR 5120), which also included a history of actions from 1998 through 2006 that led to the 2011 NPRM.

B. Costs and Benefits

As explained in section VI. Regulatory Analyses below, FMCSA and PHMSA expect 2.62 fewer crashes per year, when all States adopt rules compatible with this Federal rule,¹ and 0.3 fewer train derailments.²

FMCSA and PHMSA estimate the total annual benefits from crashes avoided to be approximately \$946,000. This consists of \$473,000 in reduced injuries, \$1,800 in reduced hazardous

material spills, \$33,000 in reduced highway property damage, and \$438,000 in reduced costs for train derailments. Total implementation costs per year are estimated to be \$302,300 in the first year, based on the added costs to State enforcement agencies of administrative, enforcement, or training activities. The additional costs for driver training should be small as the training would occur as a modification of emphasis in existing railroad grade crossing training curricula. Railroad grade crossing training curricula for drivers would include training to comply with eight FMCSRs related to the safe operation of regulated motor vehicles at railroad grade crossings and penalties for non-compliance with these railroad grade crossing safe operation rules. In addition, drivers who operate in States with existing laws similar to the regulations in this final rule will be familiar with the requirements. The costs are projected to be about \$11,200 in each of the 27 states (including the District of Columbia) that do not have an existing law or regulation similar to the requirements in the final rule. Thus, the annual net benefits from implementation of this final rule in the first year should be about \$644,000. In subsequent years, there would be no costs, thus, \$946,000 would be saved in subsequent years.

Table ES–1 displays the 10–year average annual and discounted net costs and benefits of the statute that we are implementing in this final rule.³

TABLE ES–1—TOTAL ESTIMATED 10-YEAR COSTS AND BENEFITS FOR IMPLEMENTING THE STATUTE MANDATING THE FINAL GRADE CROSSING STORAGE-SPACE RULE
[2013 dollars, in thousands, rounded]

	First year impact	Annual impact (years 2–10)	10-year total	10-year (Discounted at 3 percent) *	10-year (Discounted at 7 percent) *
Benefits	\$946	\$946	\$9,460	\$8,312	\$7,109
Costs	302	0	302	265	227
Net Benefits	644	946	9,158	8,047	6,882

* Present values of 10–year costs are discounted at 3 percent and 7 percent as specified in OMB Circular A-4, Regulatory Analysis, September 2004. Note that the first year costs and benefits are not discounted.

II. Background and Legal Basis for the Rulemaking

Section 112 of the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA) [Pub. L. 103–311,

Title I, 108 Stat. 1673, 1676, August 26, 1994, as amended by section 32509 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L.

112–141, 126 Stat. 405, 805, July 6, 2012] provides as follows:

Sec. 112 Grade Crossing Safety.

¹ 0.000285 fewer incidents per grade crossing x 9,204 storage space impacted grade crossings in States without a similar rule equals 2.62 fewer crashes per year.

² 14 derailments/122 grade crossing incidents x 2.62 incidents prevented equals 0.3 fewer train derailments.

³ Note that the numbers for the 10–year costs and the discount rates differ from what was presented in the NPRM’s RIA due to a discovery of a minor mathematical error, the updating to current year costs with the new estimated average economic value of a statistical life for injury crashes (VSL), and the removal of annual fatality benefits, because

zero fatal crashes were found in the analysis period of 1998–2005. The estimated mean VSL is derived from the DOT memorandum, “Treatment of the Economic Value of a Statistical Life in Departmental Analyses,” February 28, 2013. See <http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance%202013.pdf>.

The Secretary of Transportation shall, within 6 months after the date of enactment of this Act, amend regulations –

(1) under chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), to prohibit the driver of a motor vehicle transporting hazardous materials in commerce, and

(2) under chapter 311 of such title (relating to commercial motor vehicle safety) to prohibit the driver of any commercial motor vehicle,

from driving the motor vehicle onto a highway-rail grade crossing without having sufficient space to drive completely through the crossing without stopping.

The report by the Senate Committee on Commerce, Science, and Transportation states that section 112 is intended to:

Improve safety at highway–railroad crossings in response to fatalities that have occurred from accidents involving commercial motor vehicle operators who failed to use proper caution while crossing. The number of fatalities resulting from such accidents often is increased because of the presence of hazardous materials. . . . [T]he Committee believes that imposing a Federal statutory obligation on drivers of all commercial motor vehicles to consider whether they can cross safely and completely . . . will help to reduce the number of tragedies associated with grade crossing accidents.

S. Rep. No. 103–217, at 11 (December 9, 1993), reprinted in 1994 U.S.C.C.A.N. 1763, 1773). In sum, section 112 specifically directs DOT to prohibit drivers of motor vehicles subject to Federal hazmat law and the HMRs issued thereunder and the commercial motor vehicle operators subject to 49 U.S.C. chapter 311 and the FMCSRs issued thereunder from driving “onto a highway–rail grade crossing without having sufficient space to drive completely through the crossing without stopping.” PHMSA and FMCSA are carrying out this statutory mandate in this final rule.

With respect to section 112(1), PHMSA has been delegated the authority in Federal hazardous material transportation law (Federal hazmat law), chapter 51 of Title 49 U.S.C., to “designate material . . . or a group or class of material as hazardous when the Secretary determines that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property” and to “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce” which apply to a person who “transports hazardous material in commerce.” 49 U.S.C. 5103(a), (b)(1); see 49 CFR 1.97(b)(2).

With respect to section 112(2), FMCSA has been delegated authority under the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984), as amended, to “prescribe regulations on commercial motor vehicle safety” in order to ensure that “commercial motor vehicles are . . . operated safely.” See 49 U.S.C. 31136(a)(1);⁴ 49 CFR 1.87(f). Other factors under 49 U.S.C. 31136(a)(1) (commercial motor vehicle maintenance, equipment, and loading), and factors under section 31136(a)(2) (responsibilities on drivers not to impair safe commercial motor vehicle operation) and (3) (physical condition of drivers enables safe commercial motor vehicle operation) are not germane to this rulemaking. Section 31136(a)(4) (commercial motor vehicle operation does not have deleterious effect on driver’s physical condition) is only indirectly related in that this rule will protect drivers from certain accidents/crashes. Finally, given the minimal distances and time required to avoid prohibited rail grade crossings, the lack of opportunity for motor carriers, shippers, receivers, and transportation intermediaries to communicate timely with drivers regarding decisions to cross, and the obvious personal safety risk to the commercial motor vehicle operator of attempting to cross where there is not sufficient space, the Agency considers any risk of driver coercion under 49 U.S.C. 31136(a)(5) (commercial motor vehicle operator not to be coerced by motor carrier, shipper, receiver, or transportation intermediary into operating commercial motor vehicle in violation of certain regulations) in connection with this rulemaking to be negligible.

III. History

PHMSA and FMCSA published the NPRM for this final rule on January 28, 2011 (76 FR 5120). That notice included a history of FMCSA’s and its predecessor’s actions from 1998 through 2006 that led to the 2011 NPRM. The

⁴ For purposes of section 31136, “‘commercial motor vehicle’ means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; is designed or used to transport more than 8 passengers (including the driver) for compensation; is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or is used in transporting material found by the Secretary of Transportation to be hazardous materials under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

49 U.S.C. 31132(1); see also 49 CFR 390.5.

2011 NPRM provides a discussion of the history of this proceeding, including the survey of State statutes on grade crossings laws, grade crossing safety outreach activities, and the 2006 public meeting that provided interested parties an opportunity to express their views before issuance of the January 28, 2011 NPRM.

Since publication of the NPRM, section 112(2) was amended in MAP–21 to correct the statutory reference from chapter 315 to chapter 311 (“commercial motor vehicle safety”) of Title 49, United States Code. This clarifies that the authority for FMCSA’s final rule is the direction to “prescribe regulations on commercial motor vehicle safety” in section 31136. Accordingly, with respect to the final rule issued by FMCSA, the definition of “commercial motor vehicle” in 49 U.S.C. 31132(1) and 49 CFR 390.5 applies to the prohibition being adopted in 49 CFR 392.12.⁵

In the NPRM, PHMSA proposed to add a new paragraph 49 CFR 177.804(b) to the HMR, making the prohibition in 49 CFR 392.12 applicable to drivers of motor vehicles transporting a quantity of hazardous materials requiring placarding under subpart F of 49 CFR part 172 or a material listed as select agent or toxin listed in 42 CFR part 73. As discussed, this would make the prohibition against driving onto a highway-rail grade crossing without having sufficient space to drive completely through the crossing without stopping applicable to “drivers of motor vehicles of any size that are used to transport [these materials]. Additionally, it includes drivers engaged in intrastate or interstate commerce.” 76 FR at 5122; see also *id.* at 5123–24.

However, 49 CFR 177.804(b) is no longer available, because in a final rule published on February 28, 2011, PHMSA (in coordination with FMCSA) adopted a new § 177.804(b) providing that “a person transporting a quantity of hazardous materials requiring

⁵ FMCSA acknowledges a drafting error in the NPRM resulting in an inconsistency between the preamble and the proposed regulatory text. Whereas the preamble addressed FMCSA’s authority over “motor carrier[s]” and “motor private carrier[s],” terms used in chapter 315 of Title 49, the regulatory text in proposed 49 CFR 392.12 referenced “commercial motor vehicle[s],” as defined 49 CFR 390.5, and consistent with chapter 311 of Title 49 and related provisions in the FMCSRs, issued under the authority of § 31136. See, e.g. 49 CFR 392.11 (Railroad grade crossings; slowing down required). However, none of the commenters addressed that anomaly. The amendments to section 112 of the HMTAA by MAP–21 ratified the reference to “commercial motor vehicle” in 49 CFR 392.12 as proposed in the NPRM and adopted in this final rule.

placarding under 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 may not engage in, allow, or require texting while driving.” 76 FR 10771, 10778. PHMSA (also in coordination with FMCSA) adopted a new § 177.804(c) on December 2, 2011, providing that “a person transporting a quantity of hazardous materials requiring placarding under Part 172 [of 49 CFR] or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 may not engage in, allow, or require use of a hand-held mobile telephone while driving.” 76 FR 75470, 75485–6.

Therefore, as all the recent joint PHMSA and FMCSA rules have been applicable to “a person transporting a quantity of hazardous materials requiring placarding under 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73,” PHMSA is consolidating this final rule with the anti-texting and anti-mobile-telephone rules by creating a new introductory phrase at 49 CFR 177.804(b) that reads as set forth in the regulatory text of this rule; and adopting three subparagraphs: (b)(1) the substance of the prohibition proposed in the NPRM; (b)(2) the prohibition against texting while driving; and (b)(3) the prohibition against using a hand-held mobile telephone while driving. The cross-reference to the definition of “hazardous materials” in 49 CFR 383.5 is deleted because it is not needed. As in the current provisions against texting and hand-held mobile telephone use previously located in 49 CFR 177.804(b) and (c), these categories appear to be the materials with which the Senate Report had concern in stating that the “number of fatalities resulting from [highway-rail grade crossing] accidents often is increased because of the presence of hazardous materials.” 1994 U.S.C.C.A.N. at 1773.

IV. Comments on the Proposed Rule

Overview of Comments

FMCSA and PHMSA received 16 comments to the jointly issued NPRM. Comments were received from two truck drivers, four private individuals, and the following industry associations, State agencies, and advocacy groups:

Association of American Railroads (AAR)
American Trucking Associations, Inc. (ATA)
National Association of Chemical Distributors (NACD)
National Tank Truck Carriers, Inc. (NTTC)
Owner Operator Independent Drivers Association, Inc. (OOIDA)
California Public Utilities Commission (CPUC)
Nebraska Department of Roads (NEDR)

North Carolina Department of Transportation (NCDOT)
Commercial Vehicle Safety Alliance (CVSA)
Advocates for Highway and Auto Safety (Advocates).

A private individual, the AAR, and the NCDOT fully support the proposal. The CVSA and the CPUC support the proposal, but believe it will be difficult to enforce.

Other comments and responsive considerations are as follows.

Require Others To Mark Crossings

The two truck drivers, ATA, NACD, NTTC, and Advocates recommend that FMCSA and PHMSA require State and local jurisdictions to specially mark and provide signs at the 21,208 grade crossings that the proposal identified as likely having limited clear storage distances to accommodate commercial motor vehicles.

Response. As FMCSA and PHMSA indicated in the NPRM, recommendations to require States and local jurisdictions have been made previously. The Agencies have a clear mandate from Congress to prohibit a driver of a regulated motor vehicle from driving the vehicle onto a highway–rail grade crossing without having sufficient space to drive completely through the crossing without stopping. FMCSA and PHMSA lack authority to require the States and local governments to install markings and signage as suggested.

Further, as discussed in the NPRM, Federal Highway Administration (FHWA) has funding available annually under the Highway Safety Improvement Program (HSIP)⁶ for a variety of highway safety improvement projects. Eligible projects include (1) construction and improvement of a railway-highway grade crossing safety feature, including the installation of protection devices; (2) installation, replacement, and other improvements of highway signage and pavement markings or projects to maintain minimum levels of retroreflectivity that address a highway safety problem consistent with a State strategic highway safety plan; and (3) installation of traffic control or other warning devices at locations with high crash potential.

Also, FHWA has funding available under the Railway-Highway Crossings Program (23 U.S.C. 130) for the elimination of hazards at grade crossings. FMCSA and PHMSA have brought commenters’ suggestions to the

attention of FHWA. We noted in the NPRM that competition for limited HSIP resources means that States and other public authorities must decide whether and when particular grade crossings might get pavement markings and signage and that not all grade-crossing improvements are likely to be funded.

Logistical Challenges

In its comments, ATA noted that there are logistical challenges in implementing and enforcing the rule. OOIDA noted that the Agencies erroneously assumed drivers are aware of crossings consisting of inadequate storage space and that alternative routes exist.

Response. While we acknowledge commenters’ concerns, FMCSA and PHMSA do not believe the logistical challenges warrant a further delay in issuing the rule. The rule places upon drivers the responsibility to approach grade crossings with caution and to avoid going through the crossing unless there is enough room to completely clear the tracks without stopping. Admittedly, this may be difficult without knowing in advance all the crossings that may be along the route, the space around those crossings, and where there are traffic control devices and intersections that could result in a driver being forced to stop unexpectedly before clearing the track. The Agencies encourage enforcement discretion in those circumstances. However, the statutory mandate is clear and the Agencies do not have discretion whether to issue the rule, as drafted. The Agencies note that motor carriers are required by §§ 397.67 and 397.101 to plan routes for certain hazardous material shipments and create a written route plan document for the driver. To the extent practicable, this mandatory planning should include preparation for grade crossings.

In addition, the Agencies remind all those involved with the arrangement for transportation services that the National Transportation Safety Board (NTSB) has found situations where shippers and receivers often know of the logistical and physical challenges truck drivers would face in getting to their loading and delivery locations, yet fail to communicate those challenges to the carrier and driver.⁷ Therefore, motor

⁶ See 23 U.S.C. 104(b)(3) (“Highway Safety Improvement Program”). Improvements qualify as “highway safety improvement project[s]” under 23 U.S.C. 148(a). See also 23 CFR part 924, Highway Safety Improvement Program.

⁷ National Transportation Safety Board. 2002. *Collision Between Amtrak Train 97 and Molnar Worldwide Heavy Haul Company Tractor-Trailer Combination Vehicle at Highway-Rail Grade Crossing in Intercession City, Florida, on November 17, 2000*. Highway Accident Summary Report. NTSB/HAR–02/02. Washington, DC. The NTSB determined “that the probable cause of the November 2000 collision of Amtrak train 97 with

carriers and brokers should ask shippers and receivers about any logistical or physical challenges that might exist near, or on the roads leading to, loading and delivery locations. The Agencies recognize that avoidance of problematic grade crossings will not always be practicable. However, in many cases, industry will have opportunities to effectively address this issue.

Access to Grade Crossing Information

OOIDA noted that maps, global positioning systems (GPS), and internet-generated directions often do not include grade crossing information, let alone storage space information. ATA suggested that motor carriers are more frequently using GPS and other guidance technologies to plot routes. Because these technologies can specifically target certain locations if those locations have been built into the technology's databases, ATA suggested the Agencies share their data reflecting the locations of these grade crossings with GPS device manufacturers. The Agencies should encourage manufacturers to incorporate these points into their products so that grade crossings can be displayed and detoured around when necessary.

Response. The Agencies agree that data about the locations of potentially problematic grade crossings should be made available to the industry and GPS navigation system service providers, whenever possible. The Agencies worked with the John A. Volpe National Transportation Systems Center (Volpe) to conduct a variety of supplemental analyses which augment the Federal Railroad Administration (FRA) Grade Crossing Inventory System (GCIS) data that is available to the public. The GCIS served as the initial basis for determining the set of highway-rail grade crossings at which insufficient clear storage distance may be a concern. Volpe supplemented data from the GCIS with grade crossing latitude and longitude coordinate information available through the FRA's Office of Policy and Program Development.⁸

In June 2013, FRA released a mobile phone application (app) for Apple brand iPhone™ and iPad™ users. The Rail

the tractor-combination vehicle was the failure of the Kissimmee Utility Authority, its construction contractors and subcontractors, and the motor carrier to provide for the safe passage of the load over the grade crossing." <http://www.nts.gov/doclib/reports/2002/HAR0202.pdf>.

⁸Proprietary digital road network data files were also used and analyzed for potential storage space issues on the basis of geographic information system (GIS) techniques described in more detail in the docketed study. The procedures the Agencies used to create the dataset are fully explained in the technical supporting document.

Crossing Locator mobile app provides users with access to grade crossing inventory information and accident data from the GCIS database. The application allows users to: locate crossings by USDOT Crossing ID, address or geo-location; access inventory records submitted by states and railroads; and view accident history. Users can also select from multiple base map features to see the crossing location, expand or narrow the buffer radius of a location, or get detailed information about a specific crossing. The inventory record for a public crossing will provide information about the presence of a nearby intersection as follows: less than 75 feet, 75 to 200 feet, and 200 to 500 feet and if the intersection has a traffic signal. Although this app will not provide complete information to ensure compliance with the rule, it will assist drivers in more strategically planning their routes. FMCSA and PHMSA remind regulated vehicle drivers of their duty to follow both § 392.82, prohibiting a driver from using a hand-held mobile telephone while driving, and current § 177.804(c), being reorganized and renumbered as § 177.804(b)(3) in this final rule, prohibiting certain intrastate HM drivers from using a hand-held mobile telephone while driving. Industry and GPS navigation system service providers can now use the Rail Crossing Locator mobile app to plot routes to comply with this final rule.

Exception When No Reasonable Alternative Routes Are Available

The Nebraska Department of Roads and OOIDA suggested the rule should include an exception to allow for situations where there is no reasonable alternate route available. They argue that in rural States and industrial areas there are many crossings where no reasonable detour route exists. Nebraska also argued that the potential cost to implement the rule in Nebraska would be an unfunded mandate.

Response. As indicated above, in many situations, communications among shippers, receivers, freight forwarders, brokers, and motor carriers about issues in the vicinity of pick-up and drop-off points that may make it difficult for large trucks, especially combination vehicles, may help to address this issue. However, the Agencies acknowledge alternative routes may not be available. In certain circumstances, the railroad could be brought into the planning conversation with regard to the train schedules as the specialized equipment hauling industry does regularly and as the NTSB recommended in its 2002 report about

the November 17, 2000, crash in Intercession City, FL.⁹

Consistency With Executive Order 13563

Citing Executive Order 13563, "Improving Regulation and Regulatory Review," which President Obama issued in January 2011, a commenter urged the withdrawal of the NPRM.

Response. The final rule is required by statute and nothing in the Executive Order suggests that the Agency should delay implementation of statutory provisions for which the options for implementation are as limited as the 1994 provision implemented in today's final rule. The rule will reduce regulated motor vehicle-train crashes, while having relatively small impacts on business productivity.

Intrastate Transportation of Hazardous Materials

An anonymous commenter stated that "the proposed rule is a direct attack on the sovereignty of the several states" on the alleged ground that the Commerce Clause in Article I, Section 8 of the U.S. Constitution authorizes Congress only "[t]o regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes."

Response: In *United States v. Lopez*, 514 U.S. 549, 558–559 (1995), and *United States v. Morrison*, 529 U.S. 598, 608–609 (2000), the Supreme Court observed that "modern Commerce Clause jurisprudence" has "identified three broad categories of activity that Congress may regulate under its commerce power * * *

- "First, Congress may regulate the use of the channels of interstate commerce
- "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities
- "Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce. . . .

⁹National Transportation Safety Board. 2002. Collision Between Amtrak Train 97 and Molnar Worldwide Heavy Haul Company Tractor-Trailer Combination Vehicle at Highway-Rail Grade Crossing in Intercession City, Florida, on November 17, 2000. Highway Accident Summary Report. NTSB/HAR-02/02. Washington, DC. The NTSB determined "that the probable cause of the November 2000 collision of Amtrak train 97 with the tractor-combination vehicle was the failure of the Kissimmee Utility Authority, its construction contractors and subcontractors, and the motor carrier to provide for the safe passage of the load over the grade crossing." <http://www.nts.gov/doclib/reports/2002/HAR0202.pdf>.

i.e., those activities that substantially affect interstate commerce.” (internal citations omitted).

Accordingly, there is no doubt that Congress is empowered to regulate “activities that substantially affect interstate commerce.” Congress has explicitly done this by providing that the purpose of the Federal hazardous material transportation law “is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce,” 49 U.S.C. 5101, and defining “commerce” to include “trade or transportation in the jurisdiction of the United States . . . that affects trade or transportation between a place in a State and a place outside of the State.” 49 U.S.C. 5102(1).¹⁰

In the *Lopez* and *Morrison* cases, the Supreme Court noted that, “[w]here economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.” 514 U.S. at 560, 529 U.S. at 610. Here, the transportation of hazardous materials in commerce directly involves an economic activity, and the safety of intrastate transportation of hazardous materials has the potential of a substantial effect on interstate transportation of both hazardous and non-hazardous materials. Indeed, a crash at a highway-rail grade crossing involving any motor vehicle transporting hazardous materials necessarily has a direct effect upon the train involved in that crash, and that grade crossing is part of the national railroad system. Moreover, a grade crossing crash may result in injuries and fatalities to members of the train crew as well as to the motor vehicle operator, his or her passengers, and other persons in the vicinity of the crash.

For these reasons, we disagree that the prohibition adopted in this final rule is in violation of the Commerce Clause of the U.S. Constitution.

Expand Applicability to All Vehicles

A commenter suggested FMCSA and PHMSA should expand the applicability

¹⁰ As enacted in 1975, the Hazardous Material Transportation Act declared that it was “the policy of Congress in this chapter to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous material in commerce.” Public Law 93-633, Title I, sec. 102, 88 Stat. 2156 (Jan. 3, 1975). In the same Act, “commerce” was defined to mean “trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A).” *Id.*, sec. 103(1).

of this final rule to “all vehicles” and “not just Commercial vehicles” that cross highway-rail grade crossings. She stated that this is a dangerous problem for all traffic as she lives near a grade crossing and sees vehicles trapped on the tracks regularly.

Response. As discussed above, PHMSA has authority to prescribe regulations for the transportation of hazardous material “in intrastate, interstate, and foreign commerce.” 49 U.S.C. 5103(b)(1). For this reason, the HMRs do not apply to “[t]ransportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle.” 49 CFR 171.1(d)(6). Similarly, FMCSA has authority to “prescribe regulations on commercial motor vehicle safety.” 49 U.S.C. 31136(a). But neither Agency has statutory authority to regulate non-commercial vehicles, *i.e.*, vehicles not transporting persons or property in commerce. Accordingly, in HMTAA section 112, Congress directed DOT to prohibit the driver of “a motor vehicle transporting hazardous materials *in commerce*” or “any *commercial* motor vehicle” from entering a highway-rail grade crossing when there was not “sufficient space to drive completely through the crossing without stopping.” (emphasis supplied). This final rule carries out that mandate without going beyond the statutory authority of the two Agencies.

V. The Final Rule

49 CFR 392.12

This final rule implements the statutory mandate enacted in section 112 of the HMTAA, as amended. The rule prohibits regulated motor vehicles from using certain grade crossings.

To proceed through a grade crossing with inadequate storage distance, a driver of a regulated motor vehicle will have to either ignore the traffic control device or comply with the traffic control device but violate the rule by driving onto the grade crossing without having sufficient space to drive completely through the crossing without stopping. As discussed earlier, the shipper, receiver, broker, and motor carrier should communicate about problematic routes in advance to avoid placing drivers in such untenable positions by re-routing standard-sized regulated motor vehicles around such grade crossings, using smaller regulated motor vehicles at the crossings, or ensuring that the railroad company is informed well ahead of the planned crossing time and is given an opportunity to inform train crews and flagmen. Also, as discussed earlier, FRA’s Rail Crossing

Locator mobile app will provide access to grade crossing inventory information that will assist drivers in more strategically planning their routes to avoid problematic grade crossings.

49 CFR 177.804

To ensure that the statutory language of section 112, as amended, applies to both interstate and intrastate motor carriers transporting hazardous materials, PHMSA revises 49 CFR 177.804. PHMSA has revised paragraph (b) by creating a new introductory phrase as set forth in the regulatory text of this rule. New paragraph (b)(1) requires the driver of a motor vehicle transporting this type and quantity of hazardous materials to comply with the safe clearance requirements for highway-rail crossings in 49 CFR 392.12. As such, motor carriers and drivers who engage in the transportation of covered materials must comply with the safe clearance requirements in § 392.12 of the FMCSRs. Current paragraph (b) has become paragraph (b)(2), and current paragraph (c) has become paragraph (b)(3).

VI. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures

FMCSA and PHMSA have determined that this action is a non-significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563, issued January 18, 2011 (76 FR 3821). FMCSA and PHMSA expect the final rule will have minimal costs and generate minimal public interest. Of the 16 comments submitted to the January 28, 2011 NPRM, none provided data or information that would suggest the economic impact would meet or exceed the threshold for the Executive Order.

Costs and Benefits of Rule Implementation

The Agencies are required by statute to implement a rule prohibiting drivers of regulated motor vehicles from entering a highway-rail grade crossing unless there is sufficient space to clear the crossing completely without stopping. The data available to FMCSA indicate that those States with existing statutes or regulations similar to the proposed Federal rule have somewhat lower crash rates at grade crossings identified as having significant risk of storage-related issues. While factors other than the States’ storage-space rules may be responsible for some crash rate

differences, the Agencies believe the differential is large enough to suggest that such rules have safety benefits. The number of States which have voluntarily adopted storage-space rules also suggests that the costs of implementing the requirements have not proven to be an issue with the motor carrier industry. Based on the safety impacts seen in the States that have adopted requirements similar to those addressed in this rulemaking, FMCSA and PHMSA believe the rule will provide a cost-beneficial enhancement to safety.

In the cost and benefit discussions that follow, the Agencies consider the costs and benefits applicable to the total population of carriers affected by this rule. Because the final rule does not mandate specific changes in carrier operations, driver training, or grade crossing infrastructure enhancements and no specific comments were received providing any data to change the Agencies' analyses, FMCSA and PHMSA conclude that the cost impacts will not be significant. Because a substantial number of States already have in place storage-space rules, drivers of regulated motor vehicles operating in or through those States

should have the experience and knowledge needed to ensure compliance. FMCSA and PHMSA do not believe the rule will require special training of drivers operating in the other States. The Agencies requested public comment on this issue, but received none.

For regulated vehicles, the storage-distance related annual crash rate per 1,000 grade crossings is 0.72 based on data from 1998–2005.¹¹ FMCSA and PHMSA found that the difference in this rate between States that have laws/regulations similar to the Federal rule adopted today and those that do not is 0.285 crashes per 1,000 grade crossings per year. Thus, FMCSA and PHMSA expect 2.62 fewer crashes per year, when all States adopt this Federal rule,¹² and 0.3 fewer train derailments.¹³

FMCSA and PHMSA estimate the total annual benefits from crashes avoided to be approximately \$946,000. This consists of \$473,000 in reduced injuries, \$1,800 in reduced hazardous material spills, \$33,000 in reduced highway property damage, and \$438,000 in reduced costs for train derailments. Total implementation costs per year are estimated to be \$302,000 in the first year, based on the added costs to State

enforcement agencies of administrative, enforcement, or training activities. The additional costs for driver training should be small as the training would occur as a modification of emphasis in existing railroad grade crossing training curricula. Railroad grade crossing training curricula for drivers would include training to comply with eight FMCSRs related to the safe operation of regulated motor vehicles at railroad grade crossings and penalties for non-compliance with these railroad grade crossing safe operation rules. In addition, drivers who operate in States with existing laws similar to the regulations in this final rule will be familiar with the requirements. Thus, costs are projected to be about \$11,200 in each of the 27 states (including the District of Columbia) that do not have an existing law or regulation similar to the requirements in the final rule. Thus, the annual net benefits from implementation of this final rule in the first year should be about \$644,000. In subsequent years, there would be \$946,000 in annual savings.

Table 1 displays the 10-year average annual and discounted net costs and benefits of the statute that we are implementing in this final rule.¹⁴

TABLE 1—TOTAL ESTIMATED 10-YEAR COSTS AND BENEFITS FOR IMPLEMENTING THE STATUTE MANDATING THE FINAL GRADE CROSSING STORAGE-SPACE RULE
[2013 dollars, in thousands, rounded]

	First year impact	Annual impact (years 2–10)	10-Year total	10-Year (discounted at 3 percent) *	10-Year (discounted at 7 percent) *
Benefits	\$946	\$946	\$9,460	\$8,312	\$7,109
Costs	302	0	302	265	227
Net Benefits	644	946	9,158	8,047	6,882

* Present values of 10-year costs are discounted at 3 percent and 7 percent as specified in OMB Circular A–4, Regulatory Analysis, September 2004. Note that the first year costs and benefits are not discounted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA and PHMSA have considered the effects of this regulatory action on small entities and determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the U.S. Small Business

Administration's Office of Size Standards.

FMCSA has determined that the requirements in this rulemaking apply to a substantial number of small entities (i.e., small owner/operator motor carriers and other small businesses employing drivers of regulated motor vehicles). However, the final rule does not mandate specific changes in carrier operations or driver training. Rerouting

(as estimated by the sensitivity analysis in the NPRM) and other logistics costs that might be borne by small carriers are expected to be minimal in comparison to overall operating costs and would be incorporated into the carrier's cost of business to the extent that the carrier found the delivery profitable.

Additionally, there will probably be only minimal additional costs for driver training as the training will probably

¹¹ 122 crashes/8 years/21,208 grade crossings with limited storage space × 1,000 = 0.72.

¹² 0.000285 fewer incidents per grade crossing × 9,204 storage space impacted grade crossings in States without a similar rule equals 2.62 fewer crashes per year.

¹³ 14 derailments/122 grade crossing incidents × 2.62 incidents prevented equals 0.3 fewer train derailments.

¹⁴ Note that the numbers for the 10-year costs and the discount rates differ from what was presented in the NPRM's RIA due to a discovery of a minor mathematical error, the updating to current year costs with the new estimated average economic value of a statistical life for injury crashes (VSL),

and the removal of annual fatality benefits, because zero fatal crashes were found in the analysis period of 1998–2005. The estimated mean VSL is derived from the DOT memorandum, "Treatment of the Economic Value of a Statistical Life in Departmental Analyses," February 28, 2013. See <http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance%202013.pdf>.

occur as a modification of emphasis in existing training curricula and will not likely add extra time to the training requirement. The widespread use of communications and mapping systems, electronic and physical, as well as FRA's Rail Crossing Locator mobile app, also work well to inform drivers of routing issues and provide assistance with complying with this final rule.

We estimate that a preponderance of this rule's implementation costs—expected to be a one-time cost composed of government administrative, enforcement, or training activities—will affect transportation personnel in the 27 States, including the District of Columbia, that do not have an existing law or regulation similar to the Federal rule.

Accordingly, the Administrators of FMCSA and PHMSA hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531, *et seq.*) requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million or more (\$100 million, as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking would result in private sector expenditures less than the \$143.1 million threshold. The analysis shows a positive net benefit, with normal costs to industry falling far below the \$143.1 million threshold.

The Nebraska Department of Roads commented that the Agencies' rule is an unfunded mandate, unless language is included to allow for situations where there is no reasonable alternate route available. This is speculative, as the Nebraska Department of Roads did not provide any specific examples of this occurring within its road network. It is also worth mentioning that the rule does not require States to take any specific action, further reducing the claim of an unfunded mandate.

PHMSA and FMCSA, therefore, believe that this rule would not impose an unfunded Federal mandate.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 12630 (Takings of Private Property)

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132. FMCSA and PHMSA have determined that this rulemaking does not have federalism implications in that it does not have a substantial direct effect on States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking is required by Federal law addressing a matter of national concern. State statutory provisions were reviewed and the Agencies are not aware of any State law that would be preempted by this rulemaking. Furthermore, States have been involved actively throughout the history of the rulemaking process. For example, State officials were consulted on anticipated enforcement efforts impacted by this rule.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA and PHMSA consider the impact of paperwork and other information collection burdens imposed on the public. FMCSA and PHMSA have determined there are no current or new information collection requirements associated with this final rule.

National Environmental Policy Act and Clean Air Act

The Agencies analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under FMCSA's environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that there is no adverse impact to air quality because this final rule should result in a decrease in highway and rail vehicle emissions as a result of fewer crashes. We expect moderately positive impacts to public safety, specifically at grade

crossings, based on a decrease in the likelihood of fatalities and injuries as a result of crashes due to insufficient storage distance at grade crossings. There are no identified overall negative environmental or socioeconomic impacts associated with the final rule.

The beneficial impacts of the final rule include the positive effect on hazardous materials transportation, reduced locomotive idling time otherwise incurred as follow-on trains are delayed by derailments at grade crossings, and improved public safety, specifically at grade crossings. There are also net positive socioeconomic benefits, to motor and rail carriers in particular, in addition to positive indirect impacts to aspects of the physical and human environment.

FMCSA and PHMSA also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the U.S. Environmental Protection Agency. FMCSA and PHMSA recognize that the action taken in this rulemaking could affect emissions of criteria pollutants from regulated motor vehicles. The air emissions analysis is discussed in the Environmental Assessment (EA) for this rule. In determining whether this action conforms to CAA requirements in areas designated as nonattainment under section 107 of the CAA and maintenance areas established under section 175A of the CAA, FMCSA and PHMSA are required (among other criteria) to determine if the total direct and indirect emissions are below or above *de minimis* levels. In the case of the alternatives proposed in this Final Rule, FMCSA and PHMSA consider the change in emissions to be an indirect result of the rulemaking action. FMCSA and PHMSA are requiring drivers and motor carriers to avoid railroad-grade crossings where not enough space exists to traverse the crossing completely, which, directly, does not result in additional emissions releases. Although emissions from additional VMT as a result of re-routing are foreseeable, under the definition of 'indirect emissions' in 40 CFR 93.152, FMCSA and PHMSA lack the ability to control emissions and do not have continuing program responsibility, two of the four criteria that must be met. Therefore, this action is exempt from the CAA's general conformity requirement because it would not affect the amount of direct or indirect emissions.¹⁵ Moreover, based

¹⁵ See EPA's April 5, 2010 final rule "Revisions to the General Conformity Regulations." Also included are EPA's detailed discussion and clarification of its definitions of direct and indirect emissions at 75 FR 17254, 17260.

on FMCSA's and PHMSA's analysis, it is reasonably foreseeable that the action would not *significantly* increase total regulated motor vehicle mileage, nor would it change how these vehicles operate, or the vehicle fleet mix of motor carriers.

FMCSA and PHMSA conclude that the rule changes would have a negligible impact on the quality of several environmental components described in the EA and therefore would not require an Environmental Impact Statement. Subsequently, FMCSA and PHMSA are issuing a Finding of No Significant Impact with regard to potential environmental impact of this action.

A copy of the joint FMCSA and PHMSA Final Environmental Assessment (Final EA) is included in both dockets, FMCSA–2006–25660 and PHMSA–2010–0319 (HM–255). FMCSA and PHMSA sought public comment on its draft environmental assessment and received no comments about it.

Executive Order 12898 (Environmental Justice)

FMCSA and PHMSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined there are neither environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were “disproportionate” and “high and adverse impact” on minority or low-income populations. None of the alternatives analyzed in the Agencies' EA, discussed under NEPA, would result in high and adverse environmental impacts.

Executive Order 13045 (Protection of Children)

FMCSA and PHMSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agencies have determined this rule does not create an environmental risk to health or safety that may disproportionately affect children. None of the alternatives analyzed in the Agencies' EA, discussed under NEPA, result in environmental risk to health or safety disproportionately affecting children.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

FMCSA and PHMSA analyzed this rulemaking in accordance with the principles and criteria in Executive Order 13175, Consultation and

Coordination with Indian Tribal Governments. This rulemaking is required by law and does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on tribal governments. Thus, the funding and consultation requirements of E.O. 13175 do not apply and no tribal summary impact statement is required.

Executive Order 13211 (Energy Effects)

FMCSA and PHMSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. FMCSA and PHMSA determined that it will not be a “significant energy action” under that Executive Order because it will not be economically significant and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Motor carriers.

In consideration of the foregoing, PHMSA and FMCSA amend title 49, Code of Federal Regulations, chapter I, part 177, and chapter III, part 392, as set forth below:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 1. The authority citation for part 177 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; sec. 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994); sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); 49 CFR 1.97.

■ 2. Section 177.804 is revised to read as follows:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

(a) *General.* Motor carriers and other persons subject to this part must comply with 49 CFR part 383 and 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.

(b) *Additional prohibitions.* A person transporting a quantity of hazardous materials requiring placarding under 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73:

(1) Must comply with the safe clearance requirements for highway-rail grade crossings in § 392.12 of this title;

(2) May not engage in, allow, or require texting while driving, in accordance with § 392.80 of this title; and

(3) May not engage in, allow, or require the use of a hand-held mobile telephone while driving, in accordance with § 392.82 of this title.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 3. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

■ 4. Section 392.12 is added to read as follows:

§ 392.12 Highway-rail crossings; safe clearance.

No driver of a commercial motor vehicle shall drive onto a highway-rail grade crossing without having sufficient space to drive completely through the crossing without stopping.

Issued in Washington, DC on August 21, 2013 under authority delegated in 49 CFR 1.97 (PHMSA) and 1.87 (FMCSA).

By the Pipeline and Hazardous Materials Safety Administration.

Cynthia L. Quarterman,
Administrator.

By the Federal Motor Carrier Safety Administration.

Anne S. Ferro,
Administrator.

[FR Doc. 2013–23375 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2013–0016; 4500030113]

RIN 1018–AZ41

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Grotto Sculpin (*Cottus specus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, exclude all areas that were proposed as critical habitat for the

grotto sculpin (*Cottus specus*) under the Endangered Species Act in this final rule. In total, approximately 94 km² (36.28 mi²) plus 31 kilometers (19.2 miles) of surface stream that were proposed as critical habitat are excluded under section 4(b)(2) of the Act from this final designation for sites within Perry County, Missouri, due to the commitment of city, county, and private entities in the implementation of a Perry County Community Conservation Plan for the grotto sculpin.

DATES: This rule becomes effective on October 25, 2013.

ADDRESSES: This final rule is available on the Internet at <http://www.fws.gov/midwest/Endangered> and the rule and comments and materials received are available at <http://www.regulations.gov> at Docket No. FWS-R3-ES-2013-0016. Comments and materials received, as well as supporting documentation used in the preparation of this rule, are also available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVille Dr., Suite A, Columbia, MO 65203; telephone: 573-234-2132; facsimile: 573-234-2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800-877-8339.

FOR FURTHER INFORMATION CONTACT: Amy Salveter, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 101 Park DeVille Dr.; Suite A, Columbia, MO 65203, telephone: 573-234-2312; facsimile: 573-234-2181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations, revisions, and exclusions of critical habitat can only be completed by issuing a rule. This rule provides a rationale why all areas proposed for designation meet the requirements for exclusion under Section 4(b)(2) of the Act.

We, the U.S. Fish and Wildlife Service (Service), proposed to list the grotto sculpin as an endangered species on September 27, 2012 (76 FR 59488). On September 27, 2012, we published in the **Federal Register** a proposed

critical habitat designation for the grotto sculpin. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

We can exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species. The critical habitat areas we are excluding in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the grotto sculpin, and those areas where the benefits of exclusion from designation outweigh the benefits of inclusion. We are excluding critical habitat in Perry County, Missouri, as follows:

- Two units comprising all underground aquatic habitat underlying approximately 94 km² (36.28 mi²).
- Two units that include approximately 31 kilometers (19.2 miles) of surface stream.

Economic analysis associated with previous proposal to designate critical habitat. In order to consider economic impacts of the proposed designation published in the **Federal Register** on September 27, 2012, we prepared a draft analysis of the economic impacts of the proposed critical habitat designation and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on May 7, 2013 (78 FR 26581), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Opportunity for the public to comment on the Perry County Community Conservation Plan. Concurrent with the DEA, we announced the availability of the Perry County Community Conservation Plan (PCCCP) in the **Federal Register** on May 7, 2013 (78 FR 26581), allowing the public to provide comments on the voluntary conservation measures outlined in the PCCCP to benefit the grotto sculpin. We have incorporated the comments and have completed an evaluation of the PCCCP concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our proposal was based on scientifically sound data and analyses. We obtained opinions from two knowledgeable individuals with scientific expertise to review our

technical assumptions, analysis, and whether we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final rule. We also considered all comments and information received from the public during the comment periods.

Previous Federal Actions

Please see the listing rule published elsewhere in today's **Federal Register** for a complete history of previous Federal actions.

Background

Below we discuss only those topics directly relevant to the designation of critical habitat for the grotto sculpin in this section of the rule. More information on the species' taxonomy, distribution, biology, life history, habitat, and threats can be found in the Service's proposed listing and critical habitat rule published September 27, 2012, in the **Federal Register** (77 FR 59488) and in the final listing rule published elsewhere in today's **Federal Register**.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the grotto sculpin during two comment periods. The first comment period associated with the publication of the proposed rule (77 FR 59488) opened on September 27, 2012, and closed on November 26, 2012. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened May 7, 2013, and closed on June 6, 2013 (78 FR 26581). We did not receive any requests for a public hearing. We held a public meeting in Perryville, Missouri, on October 30, 2012. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received 35 comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received six comment letters addressing the proposed critical habitat designation or the draft economic analysis. During the October 30, 2012, public meeting, numerous Perry County residents made

comments or asked questions on the proposed designation of critical habitat for the grotto sculpin. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into 13 general issues specifically relating to the proposed critical habitat designation for the grotto sculpin and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, fish ecology expertise, and conservation biology principles. We received responses from two of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the grotto sculpin. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final listing rule but did not specifically address critical habitat.

Comments From States

Section 4(i) of the Act states that “the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency’s comments or petition.” Comments received from the State regarding the proposal to designate critical habitat for the grotto sculpin are addressed below.

Comment: The Missouri Department of Conservation questioned the need for critical habitat designation and stated that working with private landowners on a voluntary basis to implement best management practices is a proven, practical, and effective approach to the protection and recovery of listed species.

Our Response: Private landowners play a very important role in the management and conservation of threatened and endangered species. In fact, nearly 75 percent of listed species occur on private lands, in part because private landowners prove to be committed land stewards. The Service agrees that working cooperatively with private landowners to develop and implement a conservation plan that addresses the threats to the species can be an effective way to conserve the

grotto sculpin. In order to exclude areas from critical habitat, however, we need to consider whether that partnership and the benefits it will provide to the species outweigh the benefits associated with designating critical habitat. The Service’s determination to exclude critical habitat designation as outlined in this final rule is based, in part, on the strong commitment of multiple Federal, State, county, municipal, and private entities to implement the Perry County Community Conservation Plan.

Comment: The Missouri Department of Conservation noted that their agency was in the process of developing a karst management plan to assist in the conservation of grotto sculpin, and suggested that such a document is an example of a proactive approach toward recovery of the species. This document has since been completed (Crites and Schubert 2013, pp. 1–23).

Our Response: The Service has considered the Missouri Department of Conservation’s karst management plan, along with the Perry County Community Conservation Plan, in weighing the benefits of excluding critical habitat compared to those benefits of designating critical habitat. As discussed more fully under Exclusions, the conservation actions contained in those plans will sufficiently reduce threats to the species’ habitat such that the benefits of designating critical habitat are greatly reduced.

Public Comments

Comment: Several commenters questioned if critical habitat would economically impact businesses, hinder development and road building projects, reduce revenues within areas designated, or provide disincentives for companies wanting to locate in Perry County.

Our Response: The potential impact of critical habitat designation on various business and development projects was analyzed in the draft and final economic analyses. In the DEA, incremental economic impacts over an 18-year period were estimated to be between \$140,000 (a low-end scenario) and \$4,000,000 (high-end scenario) (Industrial Economics Inc. 2013, p. ES–5). In the low-end scenario, it was estimated that 76 percent of the associated costs would involve development projects, while 12.5 percent pertained to agriculture and grazing and the remaining 11.3 percent to agriculture (Industrial Economics Inc. 2013, p. ES–8). In the high-end scenario, habitat and species management efforts resulting from implementing the Perry County Community Conservation Plan would account for approximately 96

percent of projected incremental impacts. The remaining costs are attributed to development, agriculture and grazing, and transportation (Industrial Economics Inc. 2013, pp. ES8–9). Additionally, in cases where a Federal nexus occurs (Federal property or where a Federal permit or Federal funds are involved), Federal agencies must determine if proposed projects would likely adversely modify critical habitat. Because the majority of proposed critical habitat was on private land, any potential impact of final designation on local economies would pertain to section 7(a)(2) requirements when a Federal permit or Federal funds were involved.

Comment: One commenter asked if the Service would condemn private property designated as critical habitat.

Our Response: No, the Service does not “condemn” land designated as critical habitat. Only activities that involve a Federal permit, license, or funding, and are likely to destroy or adversely modify the area of critical habitat would be affected if critical habitat were designated. If this is the case, we work with the Federal agency and, where appropriate, private or other landowners to amend their project to allow it to proceed without adversely affecting the critical habitat.

Comment: One commenter inquired what costs would be associated with actions necessary to offset impacts to critical habitat.

Our Response: Any costs associated with the proposed designation of critical habitat were covered in the DEA that was made available to the public on May 7, 2013 (78 FR 26581).

Comment: One commenter asked how the designation of critical habitat would affect regulations associated with zoning and development in Perryville and Perry County.

Our Response: As outlined above, in cases where a Federal nexus occurred and critical habitat was designated, Federal agencies would have to determine if proposed projects would likely adversely modify critical habitat. No other restrictions or regulations would be instituted if critical habitat was designated.

Comment: One responder asked what reports or permits would be associated with critical habitat.

Our Response: No additional permits or reports would be required for the designation of critical habitat other than permits that are required under other existing Federal (e.g., Sections 401 and 404 of the Clean Water Act) and State (e.g., water quality standards under Missouri Clean Water Law 640 and 644) statutes.

Comment: Multiple commenters requested clarification of critical habitat boundaries, especially surface vs. subsurface areas, how they were determined, and if the Service could arbitrarily increase these areas in the future.

Our Response: The proposed critical habitat boundaries were determined based on what we considered occupied habitat within two surface streams (Blue Spring Branch and Cinque Hommes Creek) and the recharge areas of five cave systems (Moore Cave, Crevice Cave, Mystery Cave, Rimstone River Cave, and Running Bull Cave). Grotto sculpin are known to occupy underground aquatic habitats including cave streams, springs, and resurgence areas. Consequently, the recharge zones of the caves listed above included all interconnected aquatic habitats between surface and subsurface areas. The Service cannot arbitrarily increase areas designated as critical habitat in the future. Any additional areas that may be determined to be essential to the conservation of the species in the future (see next response) can only be designated as critical habitat if such areas are outlined in a subsequent draft proposed rule that would be subject to the same review process, analysis, and final determination as was undertaken with this current rulemaking.

Comment: Two commenters requested clarification of the definition of critical habitat and what factors are considered in a designation.

Our Response: Under section 3 of the Act, critical habitat is defined as: (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas essential to the conservation of the grotto sculpin were identified in the Service's proposed rule of September 27, 2012 (77 FR 59488). Section 4(b)(2) of the Act states that the Secretary shall designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the

benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Comment: One commenter asked if there are guidelines for best management practices and how such recommendations would be made available to private landowners.

Our Response: Best management practices that target actions that could benefit the grotto sculpin on private property do exist, and such recommendations will be made available through various land management agencies who work cooperatively with private landowners (e.g., Natural Resources Conservation Service (NRCS), the University of Missouri Perry County Extension Service, the Missouri Department of Conservation's Private Lands Division, and the Service's Partners for Fish and Wildlife Program). Karst management guidelines are also available on the Missouri Department of Conservation's internet site at: <http://mdc.mo.gov/your-property/improve-your-property/building-karst-best-practices>. Additionally, the Missouri Department of Conservation (MDC) recently finalized management recommendations and best management practices for the grotto sculpin (Crites and Schubert 2013, pp. 16–20).

Comment: Multiple commenters asked if funds would be available to private landowners to assist in implementing management practices or guidelines that contribute to the conservation of the grotto sculpin.

Our Response: Various landowner incentive cost-share programs are available through NRCS, MDC, and the Service's Fish and Wildlife Program. The amount of available funding, however, depends on multiple factors, including Congressional appropriations, the type of actions needed, and the length of the appropriate cost-share agreement.

Comment: Multiple commenters asked what enforcement mechanisms would be associated with critical habitat if designated and who would enforce such regulations.

Our Response: The designation of critical habitat would not result in the initiation of any separate enforcement provisions. As outlined above, in cases where a Federal nexus occurred and critical habitat was designated, Federal agencies would have to determine if proposed projects would likely adversely modify critical habitat.

Comment: Multiple commenters provided support for the Perry County Community Conservation Plan (PCCCCP) and stated that implementation of the plan would address threats to the species, improve water quality, and contribute to the conservation of the grotto sculpin such that the species should not be listed or should be listed as threatened rather than endangered, or that critical habitat should not be designated. The Service did not receive any comments in opposition to the PCCCCP.

Our Response: As stated elsewhere in this final rule, the Service agrees that the actions outlined in the PCCCCP address threats to the species such that critical habitat should be excluded from designation. Working collaboratively with the residents of Perry County and other Federal, State, and local partners is the most effective and proactive approach to conservation of this species. However, there is not yet sufficient evidence that the PCCCCP is adequate to avoid listing the grotto sculpin. Nonetheless, the Service will reevaluate the status of the grotto sculpin during a 5-year review subsequent to its listing.

Comment: One agency questioned the estimated economic impact related to formal consultations associated with Federal projects that were anticipated within areas designated as critical habitat. This agency noted that if critical habitat were designated, it would work closely with the Service through informal consultation to implement conservation measures that would avoid any potential adverse modification to critical habitat.

Our Response: Had critical habitat been designated, the Service would prefer informal over formal consultation to avoid any potential adverse modification to critical habitat. However, in light of our decision to exclude areas proposed for critical habitat designation, this is no longer a relevant issue.

Comment: One commenter noted that the inability to establish recovery benchmarks for the grotto sculpin at this time devalued the draft economic analysis related to proposed critical habitat designation.

Our Response: Despite the lack of recovery benchmarks, the Service is required to conduct an economic analysis for any critical habitat that is proposed. The Service is currently in the process of establishing a recovery outline for the grotto sculpin to establish conservation priorities until a recovery plan can be developed.

Comment: One commenter stated that species protection and recovery are more effectively achieved by providing

incentives to landowners rather than imposing land-use restrictions and penalties associated with critical habitat.

Our Response: As noted in the Service's proposed rule of September 27, 2013 (77 FR 59488), there would have been minimal impact to private landowners had critical habitat been designated and such a designation would not have imposed land-use restrictions and penalties on private property. The Service supports cooperative partnerships that address threats to listed species and their habitat through conservation planning as in the case of the PCCCP. Additionally, the Service supports multiple landowner incentive programs that can assist private land owners in the implementation of conservation measures outlined in a collaborative plan. Such programs are available through multiple Federal and State agencies, and we remain hopeful that the funding necessary for implementation will remain available. The Service acknowledges, however, that the availability of funds for various Federal and State landowner incentive programs depends on multiple factors.

Summary of Changes From Proposed Rule

In the proposed rule published on September 27, 2012 (77 FR 59488), we proposed four units, totaling approximately 94 km² (36.28 mi²) plus 31 kilometers (19.2 miles) of surface stream as critical habitat for the grotto sculpin. Subsequent to publication of the proposed rule, a collaborative partnership involving Federal, State, county, municipal, and private entities developed the Perry County Community Conservation Plan. The plan outlines detailed conservation measures that address threats to habitat that were identified in the proposed rule. We considered this conservation plan and the working partnership with those entities in evaluating potential exclusions from critical habitat. Based on that analysis, as discussed fully under Exclusions below, we determined that all areas that were proposed as critical habitat should be excluded from this final designation.

Critical Habitat

Background

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

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

found those physical or biological features

(a) Essential to the conservation of the species, and

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

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

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

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

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or

biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements (PCEs), such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside areas proposed for critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require

special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the grotto sculpin from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on September 27, 2012 (77 FR 59488), and in the information presented below. Additional information can be found in the final listing rule published elsewhere in today's **Federal Register**, and based on published literature (Burr *et al.* 2001, pp. 276–279; Gerken and Adams 2008, pp. 74–78; Adams *et al.* 2013, pp. 484–494), unpublished reports, and professional opinions by recognized experts. While little is known of the specific habitat requirements for this species, the best available information shows that the species requires adequate water quality, quantity, and flow, a stable stream channel, minimal sedimentation, organic input into caves during rain events, and a sufficient prey base for juveniles (Burr *et al.* 2001, pp. 291, 294–295; Gerken and Adams 2008, pp. 74–76; Adams *et al.* 2013, pp. 484–494). Due to the complex nature of the multiple karst regions in Perry County, diverse hydrologic components will be essential to the conservation of grotto sculpin; these include cave streams, resurgences, springs, surface streams, and surface and subterranean interconnected or interspatial habitats (Vandike 1985, pp. 1–10; Day 2008, pp. 22–24; Adams *et al.* 2013, p. 493). To identify the physical and biological features essential to the grotto sculpin, we relied on current conditions at locations where the species survives and the information available on this species.

Space for Individual and Population Growth and for Normal Behavior

The specific space requirements for the grotto sculpin are unknown, but given the mixture of habitats used by different life stages of this fish (Burr *et al.*

al. 2001, p. 284; Gerken and Adams 2008, p. 76), space is not likely a limiting factor; however, silt and various pollutants may affect the species' overall distribution and abundance (Burr *et al.* 2001, p. 294; Gerken and Adams 2008, p. 76). Grotto sculpin occupy cave streams, resurgences (also known as "spring branches") (Vandike 1985, p. 10), springs, and surface streams (Adams 2012, pers. comm.; Adams *et al.* 2013, pp. 491–493; Burr *et al.* 2001, p. 284). They occupy pools and riffles with moderate flows and variable depths (4 to 33 centimeters (cm) (1.6 to 13 in)) (Burr *et al.* 2001, p. 284). Although grotto sculpin have been documented to occur over a variety of substrates (for example, silt, gravel, cobble, rock rubble, and bedrock), the presence of cobble or pebble is necessary for spawning (Burr *et al.* 2001, p. 284; Adams *et al.* unpub. data; Adams *et al.* 2013, pp. 491–492).

Grotto sculpin tend to be associated with an abundance of invertebrate prey, deeper cave pools, substrate containing cobble, and sustained water flow (Gerken 2007, pp. 16–17). Surface habitat used by grotto sculpins is characterized by an abundance of amphipods and isopods. In caves, grotto sculpins occupy deeper pools with cobble, and with a relatively high abundance of amphipods and isopods. Although usually in lower abundance, grotto sculpins also occupy shallow cave pools where the substrate consists of silt deposits deeper than 1.9 cm (0.8 in) (Gerken 2007, p. 16). Juvenile grotto sculpins use resurgences as nursery areas, where they maximize growth before migrating upstream into caves to reproduce or downstream to surface streams (Day 2008, p. 18).

Habitat conditions described above provide space, cover, shelter, and sites for foraging, breeding, reproduction, and growth of offspring for the grotto sculpin. These habitats are found in cave streams, resurgences, springs, and surface streams; therefore, we identify those elements as physical or biological features essential to the conservation for grotto sculpin. Additionally, interconnected karst areas and interstitial spaces that allow for the free flow of water between occupied surface and subsurface habitats are primary components of essential physical and biological features for the grotto sculpin.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Although the specific food items of grotto sculpin have not been determined, they are likely similar to

the diet of banded sculpin. Banded sculpin prey include ephemeropterans, dipterans, chironomids, gastropods, amphipods, isopods, fish, spiders, aquatic oligochaetes, caddisflies, damselfly larvae, ostracods, stoneflies, beetles, crayfish, and salamanders (Phillips and Kilambi 1996, pp. 69–72; Pflieger 1997, p. 253; Tumlinson and Cline 2002, pp. 111–112; Niemiller *et al.* 2006, p. 43). Prey availability is related to the organic input that is transported with sediment and other organic materials via sinkholes into stream habitats (Burr *et al.* 2001, p. 291). An abundance of aquatic invertebrates is necessary to support a viable population of grotto sculpin (Niemiller *et al.* 2006, p. 43; Gerken and Adams 2008, p. 75). Therefore, based on this information, we identify the availability of appropriate organic input supporting the aquatic invertebrate prey base to be a primary component of the essential physical and biological features for the grotto sculpin.

The grotto sculpin occurs in pools and riffles of cave streams, resurgences, springs, and surface streams (Burr *et al.* 2001, pp. 280–284; Adams 2012, pers. comm.; Adams *et al.* 2013, pp. 491–493). It can occur over multiple substrates including sand, silt, gravel, pebble, cobble, breakdown, and bedrock, although the association with silt might be due to the prevalence of sediment within occupied habitat rather than a preference for such substrates (Vandike 1985, p. 38; Burr *et al.* 2001, p. 284; Gerken 2007, pp. 13, 22–25; Gerken and Adams 2008, pp. 76–77).

Optimum water temperature, flow rates, and water depth in occupied streams have not been established for grotto sculpin and vary widely depending on life stage and location (*e.g.*, pools of cave streams versus flowing water in resurgences or surface streams) (Gerken 2007, pp. 20–27). Water depth varied, but ranged between 4 and 33 cm (1.6 and 13.0 in), and flow rates were between .05 and 6.67 cm/sec (0.2 and 2.6 in/sec) (Burr *et al.* 2001, p. 284; Gerken 2007, p. 17).

Occupied cave streams, resurgences, springs, surface streams, interconnected karst areas, and interstitial spaces should have reduced levels of silt, sustained water flows, high dissolved oxygen levels, and reduced amounts of organic and inorganic contaminants. Interconnected karst areas and interstitial spaces should be free of debris and have reduced levels of silt to allow for free flow of water between occupied habitats. Water quality standards for contaminants should follow guidelines established by the Environmental Protection Agency, except for ammonia and copper. Water

quality criteria for ammonia and copper should follow minimum levels reported by Wang *et al.* (2007, pp. 2048–2055) and established for juvenile freshwater mussels (less than 4.6 parts per billion copper per liter and less than 370 parts per billion ammonia expressed as nitrogen per liter).

Optimum water quality parameters have not been determined for the grotto sculpin. Habitat information for other species that inhabit cave streams and springs in Missouri (such as the endangered Tumbling Creek cavesnail) may be used as suitable surrogates for the grotto sculpin. In the absence of information specific to the grotto sculpin's water quality needs, we believe the criteria established for the Tumbling Creek cavesnail are also suitable for the grotto sculpin. Therefore, we recommend the following water quality parameters for the grotto sculpin: An average daily discharge of 0.07 to 150 cubic feet per second (cfs); water temperature of cave streams, springs, resurgences, and surface streams should be between 55 and 62 °F (12.78 and 16.67 °C); dissolved oxygen levels should equal or exceed 4.5 milligrams per liter; and turbidity of an average monthly reading should not exceed 200 Nephelometric Units (units used to measure sediment discharge) and should not persist for a period greater than 4 hours. Adequate water flow, temperature, and quality (as defined above) are essential for normal behavior, growth, and viability during all life stages of the grotto sculpin. Therefore, based on the information above, we identify adequate water flow, temperature, and quality to be physical and biological features essential to the conservation for the grotto sculpin.

Cover or Shelter

Burr *et al.* (2001, p. 284) noted that grotto sculpin occur in the open as well as under rocks. Rocks within cave streams allow the grotto sculpin to avoid predators (Gerken 2007, p. 25); at least six different species of piscivorous, predatory fish occur within occupied grotto sculpin habitat (Burr *et al.* 2001, p. 284). Additionally, rocks provide a substrate for egg laying (Gerken 2007, p. 2; Adams 2005, p. 10; Adams *et al.* 2013, p. 492). In addition to rocks, large cobble has been identified as an important component of sculpin habitat (Gerken 2007, pp. 22–27).

Due to the wide variety of habitats used by grotto sculpin depending on age and season (Burr *et al.* 2001, pp. 283–284, 294; Gerken 2007, pp. 27–30; Gerken and Adams 2008, pp. 75–76), occupied underground and surface aquatic habitats including associated

transitional aquatic habitats are all essential physical or biological features for the species. The grotto sculpin requires cave and surface streams with a stable stream bottom and solid bedrock and stable stream banks to maintain a stable horizontal dimension and vertical profile of pool and riffle habitats. A mixture of bottom substrates, including sand, gravel, pebbles, cobble, ceiling breakdown areas and larger rocks, is necessary to provide cover and attachment surfaces for egg masses (Adams *et al.* 2013, pp. 491–492). Additionally, bottom substrates must not be covered with excessive amounts of silt.

Therefore, based on the information above, we identify the following as primary components of the physical or biological features essential to the conservation of the grotto sculpin: Cave streams, resurgences, springs, surface streams, and interconnected areas between surface and subterranean habitats with stable bottom and banks; rocks or large cobble to provide cover; and substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

Sites for Breeding, Reproduction, or Rearing

Adams (2005, p. 10; Adams *et al.* 2008, p. 8; Gerken 2007, pp. 19–21) demonstrated that grotto sculpin spawn in caves but some young-of-the-year move to resurgences or surface streams and spend much of their lives away from caves. Juvenile grotto sculpin likely move out of caves to avoid predation by adult sculpin (Gerken 2007, p. 19) or move to take advantage of higher levels of prey in such habitats (Burr *et al.* 2001, p. 291; Gerken 2007, pp. 19–20; Day 2008, pp. 18–21). Gerken (2007, p. 19) and Day (2008, p. 18) postulated that juvenile grotto sculpin use resurgences and surface streams as nursery areas to gain size by taking advantage of increased food resources. At some point in their maturation process, juvenile sculpin move from resurgences and surface streams into caves to complete their life cycle (Gerken 2007, p. 19; Day 2008, p. 18). Based on the information above, consistent connectivity between cave streams and resurgences or surface streams is a primary component of the physical or biological features essential to the conservation for the grotto sculpin because they allow for the free flow of water between occupied surface and subsurface habitats.

Primary Constituent Elements for the Grotto Sculpin

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the grotto sculpin in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species. Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the grotto sculpin are:

(1) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) with riffles, runs, pools, and transition zones between these stream features.

(2) Instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of surface runoff, cave streams, resurgences, springs, and occupied surface streams and all interconnected karst areas with flowing water.

(3) Water temperature between 12.8 and 16.7 °C (55 and 62 °F), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units for a duration not to exceed 4 hours.

(4) Adequate water quality characterized by low levels of contaminants. Adequate water quality is defined as the quality necessary for normal behavior, growth, and viability of all life stages of the grotto sculpin.

(5) Bottom substrates consisting of a mixture of sand, gravel, pebble, cobble, solid bedrock, larger cobble and rocks for cover, with low amounts of sediments.

(6) Abundance of aquatic invertebrate prey base to support the different life stages of the grotto sculpin.

(7) Connected underground and surface aquatic habitats that provide for all life stages of the grotto sculpin, with sufficient water levels to facilitate movement of individuals among habitats.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain

features that are essential to the conservation of the species and may require special management considerations or protection. The features essential to the conservation of grotto sculpin center around attributes that highlight the importance of water quality within the karst recharge areas of occupied cave streams, resurgences, and surface streams. Special management considerations or protection are required within occupied habitats to address these threats. Management activities that could ameliorate these threats include (but are not limited to) actions that:

(1) Minimize potential adverse effects from contaminants originating from sinkholes where trash, debris, chemical containers, or animal carcasses have been deposited;

(2) reduce soil erosion and silt deposition;

(3) reduce storm runoff of potentially harmful agricultural pesticides, various oil pollutants, and other sources of water soluble contaminants;

(4) implement best management practices to minimize possible contamination from septic systems;

(5) provide recommendations that improve the efficiency and efficacy of vertical drains;

(6) place and manage vegetative buffers around vertical drains designed to reduce soil erosion, reduce water flow, and improve the quality of water runoff;

(7) implement best management practices to minimize potential impacts from residential, commercial, industrial and agricultural development;

(8) provide recommendations that significantly reduce sources of nitrification and fecal coliform and coliform bacteria originating from domestic livestock;

(9) implement best management practices that enhance surface stream and riparian corridor stability;

(10) enforce existing Federal and State regulations that are in place to maintain high water quality standards;

(11) minimize, enhance, and conserve water levels of underground aquifers, cave streams, resurgences, springs, and surface streams; and

(12) provide technical assistance through public outreach and education.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to identify critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50

CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not identifying any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species.

In order to determine which sites are currently occupied, we used information from surveys conducted by Burr *et al.* (2001, pp. 280–286), Adams (2005, pp. 11–13), Day (2008, pp. 9–11; 62–66), Gerken (2007, pp. 5–8), and Gerken and Adams (2008, pp. 74–76), dye tracing studies conducted by Moss and Pobst (2010, pp. 146–160, 177, 180–192) and information provided by Adams *et al.* (2013, pp. 484–494). Currently, occupied habitat for the species includes all cave streams, resurgences, springs, and surface streams associated with the recharge areas for the Moore Cave System, the Crevice Cave System, Mystery Cave, Rimstone River Cave, Running Bull Cave, and Hot Caverns; as well as Thunder Hole Resurgence, Mystery Cave Resurgence, Cinque Hommes Creek, and Blue Spring Branch. After identifying the specific locations occupied by the grotto sculpin, we determined the appropriate area of occupied segments of aquatic habitats essential for the conservation of the species. These areas are collectively contained within the Central Perryville and Mystery–Rimstone karst areas as described by House (1976, pp. 13–14) and Burr *et al.* (2001, pp. 280–282).

Although there are underground portions within the Central Perryville and Mystery–Rimstone karst areas that are inaccessible to humans, all underground aquatic habitats within the recharge zones of the Moore Cave System, the Crevice Cave System, Mystery Cave, Rimstone River Cave, Running Bull Cave, Thunder Hole Resurgence, Mystery Cave Resurgence, Cinque Hommes Creek, and Blue Spring Branch are believed to be occupied by the grotto sculpin. Areas delineated within the Central Perryville and Mystery–Rimstone karst areas are believed to comprise the entire known range of the grotto sculpin and components of these areas as outlined above were used in the proposed critical habitat designation of September 27, 2012 (77 FR 59488).

We are excluding all units from critical habitat for the grotto sculpin, as described below. For a description of the areas that were proposed as critical habitat (and excluded in this final rule) see the September 27, 2012, proposal

(77 FR 59488). We determined that 94 km² (36 mi²) of aquatic, karst, nonsurface stream habitat (includes caves, resurgent streams, and interconnective underground aquatic areas) and 31 km (19 mi) of two surface streams met the definition for critical habitat for grotto sculpin. We are excluding all of those areas from designation in this final rule.

Final Determination for Critical Habitat and Effects of Critical Habitat Designation

In the proposed rule published on September 27, 2012 (77 FR 59488), we proposed four units, totaling approximately 94 km² (36.28 mi²) plus 31 kilometers (19.2 miles) of surface stream as critical habitat for the grotto sculpin. Subsequent to publication of the proposed rule, a collaborative partnership involving Federal, State, county, municipal, and private entities developed the Perry County Community Conservation Plan. The plan outlines detailed conservation measures that address threats to habitat that were identified in the proposed rule. We considered this conservation plan and the working partnership with those entities in evaluating potential exclusions from critical habitat. Based on that analysis, as discussed fully under Exclusions below, we determined that all areas that were proposed as critical habitat should be excluded from this final designation. Because we are excluding all areas from designation (that is, we are not designating critical habitat) for the grotto sculpin, typical requirements under section 7(a)(2) of the Act are not applicable.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented

to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation of September 27, 2012 (77 FR 59488). Therefore, our decision to exclude critical habitat for the grotto sculpin is not pursuant to any exemption under section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the

area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of grotto sculpin, the benefits of critical habitat include public awareness of grotto sculpin presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for grotto sculpin due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether

exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain

lands in the proposed critical habitat (Unit 1: Central Perryville Karst Area; Unit 2: Mystery–Rimstone Karst Area; Unit 3: Blue Spring Branch; and Unit 4: Cinque Hommes Creek) were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding all areas

from critical habitat designation for the grotto sculpin. Tables 1 and 2 below provide approximate areas (km² (mi²); km (mi)) of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 1—NONSURFACE STREAM AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in Km ² (Mi ²)	Areas excluded from critical habitat, in Km ² (Mi ²)
1	Central Perryville Karst Area	46 (18)	46 (18)
2	Mystery–Rimstone Karst Area	48 (19)	48 (19)
Total		94 (36)	94 (36)

TABLE 2—SURFACE STREAM AREAS EXCLUDED FROM THE DESIGNATION OF CRITICAL HABITAT BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in Km (Mi)	Areas excluded from critical habitat, in Km (Mi)
3	Blue Spring Branch	6 (4)	6 (4)
4	Cinque Hommes Creek	24 (14)	24 (14)
Total		31 (19)	31 (19)

We are excluding these areas because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the “other relevant factor” provisions of section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics Incorporated 2013).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the grotto sculpin; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and

local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on

water management and transportation projects, Federal lands, small entities, and the energy industry. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers those costs that may occur in the 18 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond an 18-year timeframe.

Due to uncertainties associated with the Service’s ability to quantify potential incremental conservation efforts resulting from the designation of critical habitat, it was difficult to predict what projects would likely generate recommendations for additional conservation measures (Industrial Economics Incorporated 2013, pp. 4–21). Nonetheless, the Service anticipated that the designation of critical habitat would not likely preclude development in Perry County. Consequently, because any impacts associated with additional conservation efforts are not anticipated to have a substantial effect on the regional economy (Industrial Economics Incorporated 2013, pp. 4–21).

Consequently, no areas are excluded based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Columbia, Missouri Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at <http://www.fws.gov/midwest/Endangered> or <http://www.regulations.gov>, at Docket No. FWS-R3-ES-2013-0016.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether any conservation partnerships would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation, as explained below.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the Perry County Community Conservation Plan fulfills the above criteria, and are excluding non-Federal lands covered by this plan that provide for the conservation of the grotto sculpin.

Perry County Community Conservation Plan

The Perry County Community Conservation Plan (PCCCP) is a collaborative and cooperative plan

involving 56 entities and organizations (Perry County Community Economic and Environment Committee (PCCEEC)) in Perry County, Missouri, who are committed to the ongoing implementation of conservation measures that benefit the grotto sculpin and address threats identified in the proposed rule of September 27, 2012 (77 FR 59488) and the final listing rule published elsewhere in today's **Federal Register**. Entities and residents of Perry County have been, and continue to be, committed to implementing land use practices that provide conservation benefits to the grotto sculpin (PCCEEC 2013, pp. 48–119), but the PCCEEC is committed to the implementation of additional measures that will address threats to the species into the foreseeable future (PCCEEC 2013, p. 42). Evidence of the PCCEEC's commitment to the PCCCP is demonstrated by an estimation that no less than \$250,000 has been devoted to the completion of this plan since November 2012 (PCCEEC 2013, p. 42). As of April 2013, PCCEEC became a permanent group formed to ensure that actions outlined in the PCCCP would be ongoing and implemented into the future (PCCEEC 2013, p. 42).

In addition to conservation measures outlined in the PCCCP, the PCCEEC adopted the Missouri Department of Conservation's Best Management Practices (BMPs) for karst areas (available at: <http://mdc.mo.gov/your-property/improve-your-property/building-karst-best-practices>) (PCCEEC 2013, p. 21), and is committed to practices that are outlined in a Perry County karst management plan (Crites 2013, pers. comm.; Crites and Schubert 2013, pp. 16–20) and a broader interagency Perry County Karst Watershed Plan that is in development (PCCEEC 2013, p. 43). The Perry County karst management plan and the Perry County Karst Watershed Plan that is in development will further highlight the partnership between the PCCEEC and its Federal, State, and private partners and will outline multiple actions that will improve, enhance, and maintain grotto sculpin karst and surface stream habitats. The Perry County Karst Management Plan covers areas beyond those that were proposed as critical habitat for the species (Crites and Schubert 2013, pp. 2–3) and will further contribute to improved water quality of aquatic karst areas within Perry County.

The PCCEEC's commitment to the conservation of the grotto sculpin is further demonstrated by the numerous planned conservation actions outlined in the PCCCP that are scheduled between April 2013 and April 2014

(PCCEEC 2013, pp. 42–45). Conservation projects to benefit the species include numerous outreach events; removing trash and debris from sinkholes; water quality monitoring; developing a new sinkhole policy and sinkhole improvement budget for the City of Perryville; and inventorying and prioritizing sinkholes targeted for cleanup, maintenance, and management. The PCCCP incorporates the principles of adaptive management, and the document will continually be updated as new information becomes available (PCCEEC 2013, pp. 5, 46). Additionally, the plan contains a monitoring component that will provide a basis for evaluating the effectiveness of the plan (PCCEEC 2013, p. 46). Because the grotto sculpin is dependent on the health of the aquatic environment, adequate water quality monitoring will be essential to assess the effectiveness of actions implemented under the PCCCP. In cooperation and collaboration with the Missouri Department of Natural Resources and the Perry County Health Department, regular water quality monitoring is anticipated in habitats occupied by the sculpin (PCCEEC 2013, p. 42, 44).

Because all the areas that meet the definition of critical habitat proposed in our September 27, 2012, proposed rule (77 FR 59488) are primarily on private land, a strong partnership between private landowners and Federal, State, and local agencies is essential to the conservation and recovery of the grotto sculpin. Assessing the effectiveness of the PCCCP will require regular monitoring of the status of the grotto sculpin, and the access to private property will be critical to such monitoring. The private landowner of one cave occupied by the grotto sculpin has denied access to the site, and the inability to monitor the species at other localities would further hinder the potential to implement on-the-ground actions that would contribute to the conservation and recovery of the grotto sculpin. Excluding these areas from critical habitat will further enhance the partnership and trust that currently exists between Federal, State, and private entities and will encourage cooperation among private landowners who otherwise may be reluctant to participate in the collaboration. In a study that evaluated the potential adverse impacts of critical habitat designation for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), Brook *et al.* (2003, pp. 1638, 1644; Seasholes 2007, p. 8) reported that 56 percent of landowners interviewed

would not grant permission to survey for the species on their property. Because interested entities cannot force access onto private property to conduct biological surveys, the inability to conduct such inventories would jeopardize the ability to conserve and recover such species.

In evaluating a conservation plan, the Service considers whether the plan is complete and if it provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act. We have evaluated the PCCCP and determined that it is complete and adequately addresses

threats to habitats occupied by the grotto sculpin. Because all areas proposed as critical habitat in our September 27, 2012, proposed rule (77 FR 59488) are on private land, it is anticipated that there would be few Federal nexuses where a consultation under section 7(a)(2) of the Act would be necessary. The PCCCP will provide the opportunity to undertake various conservation benefits that benefit the grotto sculpin in areas that would not be covered through environmental review through section 7(a)(2) consultation. Because many of the actions outlined in the PCCCP, the Missouri Department of

Conservation's Perry County karst management plan (Crites and Schubert 2013, pp. 16–20), and the draft Perry County Karst Watershed Plan involve recommendations that will benefit areas occupied by the grotto sculpin, we believe that these documents will provide the same or a better level of protection from adverse modifications to these habitats. How threats identified in the proposed listing rule of September 27, 2012 (77 FR 59488), and the final listing rule published elsewhere in today's **Federal Register** are addressed by the PCCCP is summarized in Table 3.

TABLE 3—PERRY COUNTY COMMUNITY CONSERVATION PLAN ACTIONS THAT ADDRESS THREATS IDENTIFIED IN THE SERVICE'S FINAL LISTING RULE PUBLISHED ELSEWHERE IN TODAY'S **Federal Register**

Threat	Plan of action to address threat	Cooperators or participating entity
Debris and chemicals in sinkholes and groundwater.	Sinkhole cleanup; vegetated buffers; eliminate use of lawn chemicals; implement BMPs; public outreach and education; implement Karst BMPs; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, MDC–PLD, NRCS, PCCEEC, PCFB, PCR, PFW, UMES
Sinkhole erosion and destabilization.	Purchase easements in Perryville; refine techniques for stabilizing sinkholes; sinkhole improvement plan policy for city; implement Karst BMPs; sinkhole improvement programs; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, PCCEEC, PCFB
Erosion and chemicals from vertical drains.	NRCS vertical drain guidelines; implement the MDC 2013 Perry County karst management plan.	NRCS, PCCEEC, PCFB, PCR, PCS
Improper installation and maintenance of septic systems.	Provide new landowners with septic system guidelines, monitor rural septic systems, enforce septic system regulations, outreach and education; implement Karst BMPs; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, PCCEEC, PCHD, PCFB
Industrial, commercial, and residential stormwater runoff.	Develop and implement industrial, commercial, and residential construction and maintenance guidelines for stormwater drains; implement karst BMPs; stormwater improvements; implement the MDC 2013 Perry County karst management plan; Perryville ordinances.	CP, PCCEEC, PCFB, PCDA, PCEDA
Deposition of silt due to erosion from agricultural crops, overgrazing of livestock.	Install and maintain vegetative buffers around vertical drains; repair and enhance erosion gullies; plant and maintain riparian corridors for surface streams; construct alternate water sources for livestock; outreach and education events; implement Karst BMPs; implement the MDC 2013 Perry County karst management plan.	MDC–PLD, NRCS, PCCEEC, PCFB, PCR, PCSW, PFW, UMES
Contamination and nitrification from livestock wastes.	Compost or remove dead animals; guidelines to reduce animal concentrations at feeding stations.	PCCEEC, PCFB, PCR, UMES
Contamination from underground storage tanks in Perryville.	Perryville and county ordinances and guidelines; replace or repair leaking tanks	CP, PCC, PCCEEC, PCDA, PCEDA
Overall water quality degradation from silt, persistent chemicals, application of toxic herbicides and pesticides; improper disposal of drug prescriptions or antibiotics, fertilizers, overgrazing, nitrification, contaminants in sinkholes from various sources.	Implement karst BMPs; implement the MDC 2013 Perry County karst management plan; install vegetated buffers; technical assistance from Federal, State, local, university extension service staff; comply with pesticide and herbicide labeling instructions; guidelines for grazing, use of cover crops and strips; clean-up of sinkholes, especially ones containing debris; water testing; conservation covers; filter strips; install grade stabilization structures; terrace construction in agricultural fields; riparian buffers; alternative water sources for livestock; implement Conservation Reserve Program; nutrient and manure management; abandon well plugging program; sinkhole improvement programs; MODNR/PCSW Sensitive Areas Resource Concern Program; Perryville ordinances including Surface Water Runoff Policy; Perryville Police Department drug disposal program; investigate waste water complaints.	CP, MDC–PLD; MODNR, NRCS, PCCEEC, PCDA, PCFB, PCHD, PPD, PCR, PCSW, PFW
Address threats through public outreach and education.	Adult education classes; higher education classes; landowner workshops; consultations and technical assistance to private land owners, developers; 4–H classes; local and regional newspapers; agricultural crop application training; water testing clinics; septic tank installers training; Stream Team Environmental Stewardship education and training; Missouri Ground Water Flow Program; EnviroScape Program; city and county recycling efforts; watershed location and education signage; East Perry County Fair; NRCS/MDC annual meetings; Perry County landowner meetings; implement the MDC 2013 Perry County karst management plan.	MDC–PLD; NRCS, PCCEEC, PCFB, PCHD, PCTC, PCS, PFW, UMES

Legend:

CP = City of Perryville.
 MDC-PLD = Missouri Department of Conservation-Private Lands Division.
 MODNR = Missouri Department of Natural Resources.
 NRCS = Natural Resources Conservation Service.
 PCC = Perryville Chamber of Commerce.
 PCCEEC = Perry County Community Economic and Environment Committee.
 PCEDA = Perry County Economic Development Authority.
 PCFB = Perry County Farm Bureau.
 PCHD = Perry County Health Department.
 PCDA = Perry County Development Authority.
 PCTC = Perryville Career & Tech Center.
 PCR = Perry County Residents.
 PCS = Perry County Schools.
 PCSW = Perry County Soil and Water District.
 PFW = U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program.
 PPD = Perryville Police Department.
 UMES = University of Missouri Extension Service.

Benefits of Inclusion—Perry County Community Conservation Plan

The principal benefit of designating critical habitat is that federally funded or authorized activities that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified, in addition to the jeopardy standard applied to all listed species.

Benefits of Exclusion—Perry County Community Conservation Plan

Subsequent to the proposal to list and designate critical habitat for the grotto sculpin, a collaborative partnership was developed between multiple Federal, State, and private entities in the development of a conservation plan to address threats to the species. The Perry County Community Economic and Environment Committee (PCCEEC) was established to work closely with the University of Missouri Perry County Extension Service and the Service to develop the PCCCP. To date, at least 56 entities have joined the partnership in the development and implementation of the plan. Additionally, the Missouri Department of Conservation developed a Perry County karst management plan to further address threats to grotto sculpin habitat. Exclusion of critical habitat will further strengthen the partnership that has developed and foster implementation of conservation measures outlined for the species in management plans aimed to address threats to the grotto sculpin. In the case of grotto sculpin, we believe that the benefits derived from implementing actions outlined in the above-mentioned plans will exceed those that would be provided by the designation of critical habitat and will avoid added administrative costs to the Service, Federal agencies, and other entities. As a federally listed species, we anticipate there will be few projects on privately

owned lands that will have a Federal nexus to trigger consultation under section 7. We believe that the plans outlined above: (1) Provide for sufficient habitat protection for recovery of the grotto sculpin, (2) provide for the conservation of the essential physical and biological features, (3) provide a reasonable expectation that the conservation management strategies will be implemented into the future, (4) provide conservation strategies that are likely to be effective, and (5) contain a monitoring program using an adaptive management approach to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

The benefits of excluding lands covered by the PCCCP from designated critical habitat include: Maintenance of effective working partnerships to promote the conservation of the grotto sculpin and its habitat; establishment of new partnerships; providing benefits from the conservation plan to the grotto sculpin and its habitat which exceed those that would be provided by the designation of critical habitat; and avoiding added administrative costs to the Service, Federal agencies, and applicants.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Perry County Community Conservation Plan

We believe that the benefits of excluding from critical habitat all of the areas we identified within the PCCCP and our proposed rule of September 27, 2012 (77 FR 59488), outweigh the benefits of including these areas; therefore, we are excluding these areas from this final critical habitat determination. Because a commitment by entities in Perry County to the PCCCP will ameliorate threats to the grotto sculpin, we conclude that the exclusion of critical habitat will not result in the extinction of this species.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management of Budget will review all significant rules. OIRA has determined that this rule is significant because it will raise novel legal or policy issues due to the exclusion of all critical habitat units proposed in the September 27, 2012, proposed rule (77 FR 59488).

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility

analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the grotto sculpin as proposed in our September 2012 proposed rule (77 FR 59488) will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., administrative cost of considering adverse modification; costs associated with development and implementation of the Perry County Community Conservation Plan; and impacts to development, agriculture, grazing activities and transportation (Industrial Economics Incorporated 2013, p. 4–1)). We apply the “substantial number” test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define “substantial number” or “significant economic impact.” Consequently, to assess whether a

“substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected if critical habitat was designated. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the grotto sculpin. Federal agencies also must consult with us if their activities may affect critical habitat if designated. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinstate consultation for ongoing Federal activities (see *Application of the “Adverse Modification Standard”* section).

In our final economic analysis of the proposed critical habitat designation, we attempted to evaluate the potential economic effects on small business entities resulting from conservation actions related to the listing of the grotto sculpin and the proposed designation of critical habitat. Due to uncertainties associated with the Service’s ability to quantify potential incremental conservation efforts resulting from the proposed designation of critical habitat, it was difficult to predict what projects would likely generate recommendations for additional conservation measures (Industrial Economics Incorporated 2013, p. 4–21). Nonetheless, the Service anticipated that the designation of critical habitat would not likely preclude development in Perry County. Consequently, any impacts associated with additional conservation efforts were not anticipated to have a substantial effect on the regional economy (Industrial Economics Incorporated 2013, p. 4–21). Therefore, no areas proposed for critical habitat designation would have been excluded based on economic impacts. The analysis is based on the estimated impacts associated with the rulemaking as described in the Executive Summary, chapters two through five, and

Appendices A and B of the analysis and evaluates the potential for economic impacts related to: (1) Development, (2) agriculture and grazing, and (3) transportation.

The only potential impacts on small entities associated with the proposed critical habitat rule of September 27, 2012, would be costs incurred by third-party participants related to the adverse modifications standard under section 7(a)(2) of the Act where a Federal nexus occurred. In some cases, the City of Perryville would incur some costs associated with section 7(a)(2) consultations, but this impact would represent less than 0.1 percent of the annual revenue for the City of Perryville (Industrial Economics Incorporated 2013, p. A–6). As many as 53 businesses engaged in residential, commercial, and industrial development could incur administrative costs associated with implementation of the Perry County Community Conservation Plan, and all of these entities have annual revenues at or below the relevant small business thresholds for their respective North American Industry Classification System Industries (Industrial Economics Incorporated 2013, p. A–5). However, necessary third-party administrative costs would represent only between 0.01 and 0.03 percent of annual revenues (Industrial Economics Incorporated 2013, p. A–5). The only other potential third-party administrative cost was associated with transportation projects in the City of Perryville, but such costs would constitute less than 0.01 percent of the annual revenue for the city (Industrial Economics Incorporated 2013, p. A–6).

In summary, we considered whether the proposed designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities if proposed critical habitat was finalized. Therefore, we are certifying that the designation of critical habitat for the grotto sculpin would not have resulted in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB

has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to an analysis involving critical habitat designation. Thus, based on information in the economic analysis, energy-related impacts associated with grotto sculpin conservation activities within proposed critical habitat was not anticipated (Industrial Economics Incorporated 2013, p. A–11). As such, the proposed designation of critical habitat was not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector

mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development and transportation activities; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, Missouri Department of Transportation, Perry County, Perry County Soil and Water Conservation District, and City of Perryville, which are not considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of the proposed

designation of critical habitat for grotto sculpin in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The takings implications assessment concludes that the proposed designation of critical habitat for grotto sculpin would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Missouri. We received comments from the Missouri Department of Conservation and have addressed them in the Summary of Comments and Recommendations section of the rule. Had critical habitat been designated in areas currently occupied by the grotto sculpin, no additional restrictions to those currently in place would have been imposed other than administrative costs associated with implementation of actions outlined in the Perry County Community Conservation Plan and management recommendations provided in the Missouri Department of Conservation’s Perry County karst management plan (Crites and Schubert 2013, pp. 16–20). Such costs are anticipated to be nominal and, therefore, would have little incremental impact on State and local governments and their activities. Critical habitat designation may have provided some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species would be more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species would be specifically identified. This information does not alter where and what federally sponsored activities may have occurred had critical habitat been designated. However, it may have assisted local governments in long-range

planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat would rest squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are excluding critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the grotto sculpin. The areas of critical habitat in the September 27, 2012, proposed rule (77 FR 59488) were presented on maps, and the rule provided several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating or excluding critical habitat under the Act. We published a notice outlining our

reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the grotto sculpin at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the grotto sculpin that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the grotto sculpin on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Columbia, Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this rulemaking are the staff members of the Columbia, Missouri Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

■ 2. In § 17.95, amend paragraph (e) by adding an entry for “Grotto Sculpin (*Cottus specus*)” after the entry for “Leon Springs Pupfish (*Cyprindon bovinus*)”, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Grotto Sculpin (*Cottus specus*)

Pursuant to section 4(b)(2) of the Act, we have excluded all areas determined to meet the definition of critical habitat under section 3(5)(a) of the Act for the grotto sculpin. Therefore, no specific areas are designated as critical habitat for this species.

* * * * *

Dated: September 17, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–23182 Filed 9–24–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2012–0065; MO 92210–0–0008 B2]

RIN 1018–AY16

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Grotto Sculpin (*Cottus specus*) Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine endangered species status under the Endangered Species Act of 1973, as amended, for the grotto sculpin, a species from Perry County, Missouri. The effect of this regulation will be to add this species to the lists of Endangered and Threatened Wildlife/Plants.

DATES: This rule becomes effective October 25, 2013.

ADDRESSES: This final rule and supplementary documents, such as comments received, are available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R3-ES-2012-0065. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Columbia Missouri Ecological Services Field Office, 101 Park De Ville Dr., Suite A, Columbia, MO 65203; telephone: 573-234-2132; facsimile: 573-234-2181.

FOR FURTHER INFORMATION CONTACT: Amy Salveter, Field Supervisor, Columbia Missouri Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. We are listing the grotto sculpin (*Cottus specus*) as endangered under the Endangered Species Act of 1973 (Act), as amended. Elsewhere in today's **Federal Register**, we finalize designation of critical habitat for the grotto sculpin under the Act.

The basis for our action. Under the Endangered Species Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that there are current and ongoing threats to the grotto sculpin from habitat loss and degradation of aquatic resources due to improper waste disposal, contaminated groundwater, improper application and maintenance of vertical drains, and sedimentation. The species is found only in one county in Missouri and has a restricted distribution that is coincident with karst habitats.

Peer review and public comment. We sought comments from independent

specialists to ensure that our decision is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment period.

Background

Previous Federal Actions

We first identified the grotto sculpin as a candidate species in a notice of review published in the **Federal Register** on June 13, 2002 (67 FR 40657). Candidate species are assigned listing priority numbers (LPNs) based on the immediacy and magnitude of threats, as well as taxonomic status. The lower the LPN, the higher priority that species is for us to determine appropriate action using our available resources. The grotto sculpin was assigned an LPN of 2 due to imminent threats of a high magnitude. On May 11, 2004, we received a petition dated May 4, 2004, from The Center for Biological Diversity to list 225 candidate species, including the grotto sculpin. From 2004 through 2011, notices of review published in the **Federal Register** (69 FR 24876, 70 FR 24870, 71 FR 53756, 72 FR 69034, 73 FR 75176, 74 FR 57804, 75 FR 69222, 76 FR 66370) continued to maintain an LPN of 2 for the species. On September 27, 2012, the Service published in the **Federal Register** (77 FR 59488) a proposed rule to list the grotto sculpin as endangered under the Act and proposed to designate critical habitat. We published a notice of availability in the **Federal Register** (78 FR 26581) on May 7, 2013, to make the public aware of the opportunity to review and provide comment on a draft economic analysis, the proposed rule, and the draft Perry County Community Conservation Plan. The comment period was reopened for 30 days (May 7 to June 6, 2013).

Species Information

Our proposed rule summarized much of the current literature regarding the grotto sculpin's distribution, habitat requirements, and life history and should be reviewed for detailed information (77 FR 59488; September 27, 2012). Below, we provide new information that we believe is relevant to understanding our analysis of the factors that are threats to the grotto sculpin.

Taxonomy and Species Description

The grotto sculpin belongs to the family Cottidae (Pflieger 1997, p. 253) and was found to be a unique species (*Cottus specus*) by Adams *et al.* (2013,

pp. 488–493). No other *Cottus* species overlap the geographic range of the grotto sculpin. The grotto sculpin is morphologically and genetically distinguished from all other *Cottus* species. Unique characteristics include differences in eye size and cephalic pore size (Adams *et al.* 2013, p. 490). Morphology of brain structures in hypogean (underground) individuals also differs significantly from that of epigeal (aboveground) banded sculpin, including reduced optic and olfactory lobes and enlarged inferior lobe of the hypothalamus, eminentia granularis, and crista cerebellaris (Adams 2005, pp. 17–18).

Adams *et al.* (2013, pp. 487–488) analyzed population genetics of *Cottus* sculpin in southeast Missouri through a study of sculpin from the Bois Brule drainage in Perry County, the Greasy Creek in Madison County, and the Current River in Ripley County. They identified unique evolutionary lineages for each of the three areas, based on distinct nuclear haplotypes—a single nuclear haplotype among sampled individuals throughout the Bois Brule drainage (Mystery Cave, Running Bull Cave, Rimstone River Cave, Crevice Cave, Moore Cave, and Cinque Hommes Creek), a second from Greasy Creek, and a third from the Current River.

Summary of Comments and Recommendations

In the proposed rule published on September 27, 2012 (77 FR 59488), we requested that all interested parties submit written comments on the proposal by November 13, 2012. The comment period was reopened from May 7, 2013, to June 6, 2013 (78 FR 26581, May 7, 2013). We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We held a public meeting on October 30, 2012, and did not receive any requests for a public hearing. Newspaper notices inviting general public comment on the proposal and associated critical habitat documents were published in the St. Louis Post Dispatch, Cape Girardeau Southeast Missourian, and Perryville Republic Monitor.

During the comment periods for the proposed rule, we received 364 comment letters directly addressing the proposed listing of the grotto sculpin and proposed critical habitat. Of the 364 comments submitted, 8 explicitly stated support for the listing, whereas 50 explicitly stated opposition to the listing. The remaining 306 comments provided information on historical and contemporary practices in Perry County

and posed a variety of questions including questions about the proposal process, information about the grotto sculpin, and implications of the listing to the citizens of Perry County. All substantive information provided during the comment periods has either been incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from four knowledgeable individuals with scientific expertise that included familiarity with the grotto sculpin, karst biota and habitats, biological needs of fishes, and threats. We received responses from two of the peer reviewers. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of the grotto sculpin. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* What is the rate of grotto sculpin movement? The proposed rule indicated movements of 0–50 m, but is that per day, hour, or lifetime?

Our Response: We reviewed our reference for this information and determined that Adams *et al.* (2008, pp. 6, 23) characterized movements by total distance moved from the beginning to the end of the 29-month study period. A total of 463 grotto sculpin were marked to allow for observations of movement during the study. During the 29-month study period, 311 individuals (67 percent) moved less than 50 m (164 ft), 40 (9 percent) moved 51–100 m (167–328 ft), 49 (9 percent) moved 101–200 m (331–656 ft), and 63 (14 percent) moved greater than 201 m (659 ft).

(2) *Comment:* Reword the statement “We consider the geographic range of the grotto sculpin . . .” to reflect that the range definition is based on scientific data.

Our Response: We corrected this statement in the final rule to reflect that our range delineation is based on scientific studies.

(3) *Comment:* How many grotto sculpins have been taken for scientific investigations?

Our Response: Approximately 160 individuals have been taken for scientific research since 1991. This

information is discussed under overutilization for commercial, recreational, scientific, or educational purposes in this rule.

(4) *Comment:* Clarify information about recognition of the grotto sculpin as a distinct species.

Our Response: Until the 2013 publication by Adams *et al.*, the grotto sculpin had not been formally described as a species and, therefore, was not recognized by the scientific community as a distinct species. Without an official species description, the State of Missouri could not offer protection under the Missouri State Endangered Species Law (MO ST 252.240). The new information provided by the 2013 Adams *et al.* paper was incorporated into this final rule.

(5) *Comment:* Clarify the apparent inconsistency in the statements about population size and distribution. Populations estimated in the thousands should not necessarily be characterized as “small.” Instead of estimated population size, the rule should address the restricted distribution of the species.

Our Response: Because no data on the species are available prior to 1991, characterizing the population as “small” is not fully supported because it is unclear what the pre-settlement population numbers were. We based our determination of status on the fact that there was documented mortality, populations are known to be isolated, and populations have distributions that are restricted to few cave systems. The final rule has been corrected to characterize the population as restricted instead of small.

(6) *Comment:* One peer reviewer and several public comments addressed funding and potential methods for recovery of the species, including propagation and translocation.

Our Response: Recovery efforts for the grotto sculpin will be addressed in a Recovery Plan that will include potential funding sources, collaborations with partners, and specific recovery actions and benchmarks.

(7) *Comment:* Even if some factors contributing to the imperiled status of the grotto sculpin were overestimated, the interactive effects of all the factors detailed in the proposal likely have not only an additive but a multiplying effect, so that the overall negative impact may be underestimated.

Our Response: Although we lack definitive data to support this assertion, it is likely that effects of some factors may enhance the effects of other impacts. Because this interaction could contribute to the decline of the grotto

sculpin, we have referenced synergistic effects under Cumulative Impacts.

Comments From States

Section 4(i) of the Act states, “the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency’s comments or petition.” Comments received from the State regarding the proposal to add the grotto sculpin to the list of threatened and endangered species are addressed below.

(8) *Comment:* The Missouri Department of Conservation (MDC) supports the Service’s action to list the grotto sculpin due to its confined range and threats to its continued existence.

Our Response: The Service acknowledges the MDC’s support of the listing action and will continue to coordinate with appropriate staff on future conservation efforts for the species.

Federal Agency Comments

We received no comments from Federal agencies on the proposal to list the grotto sculpin.

Public Comments

(9) *Comment:* Numerous commenters provided information on the culture, society, and economy of Perry County. Commenters also submitted information on current and historical land use practices, primarily pertaining to agriculture and farming practices, but also including sinkhole management and stream management. Many more commenters posed questions regarding the biology, life history, and research of the grotto sculpin, as well as implications of the listing to agriculture, industry, and the local economy.

Our Response: We thank all of the commenters for their interest in the conservation of this species and thank those commenters who provided information for our consideration in making this listing determination. For commenters posing questions about the biology, life history, and research of the grotto sculpin previously summarized in our proposed rule, we refer you to detailed information provided in the proposed rule. Some comments contained information that provided clarity but did not substantially change information already contained in the proposed rule. This information has been incorporated into this final rule, where appropriate. Some commenters posed questions outside of the scope of this listing action that were not addressed in our final rule.

(10) *Comment:* The Service should work with the people of Perry County to

address threats to the grotto sculpin by developing conservation strategies and best management practices and providing educational opportunities. Commenters suggested that implementation of additional practices should include incentives to landowners and contingency plans for unforeseen circumstances. One commenter asked how practices on private land would be enforced.

Our Response: The Service is working with landowners, citizens, businesses, and organizations in Perry County under a conservation plan that addresses threats to the grotto sculpin and provides benefits to water quality in the surrounding watershed. The Perry County Community Conservation Plan (Plan) is a voluntary, proactive, and self-regulatory approach developed by the local community and supported by State and Federal agencies. The Plan includes an educational campaign, prioritization of threats, and best management practices to address the threats. Existing land conservation programs will be utilized where appropriate and can include financial incentives to program participants. Participation in U.S. Department of Agriculture (USDA) conservation programs and use of best management practices on private land is voluntary. However, if a landowner elects to participate in a specific USDA program, practice standards must be met in order to remain in compliance with program guidelines. Administrators of such programs are responsible for compliance monitoring and enforcement of practice standards on private land.

(11) Comment: Commenters inquired about funding that would be available to Perry County residents for water sampling, monitoring, land remediation, landowner incentives, implementation of best management practices, underground mapping, and stormwater management.

Our Response: Financial support for habitat restoration and enhancement can be acquired through participation in conservation programs sponsored by the USDA. Locally, those programs are administered by the Natural Resources Conservation Service (NRCS), Soil and Water Conservation District (SWCD), U.S. Fish and Wildlife Service Partners for Fish and Wildlife Program, and MDC Private Lands Division. The Service, MDC, and Soil and Water Conservation Districts provide landowners cost-share for projects that benefit Federal trust resources, state trust resources, and soil and water quality, which include but are not limited to sinkhole cleanouts, stream protection, and land restoration. Other competitive funding

opportunities exist at state and national levels. For example, entities can apply for Clean Water Act Section 319 funds if a watershed plan has been developed and implemented.

(12) Comment: Several commenters asked what has been done to date to protect and conserve the grotto sculpin and its habitat, including cooperative efforts with landowners, the length of time such efforts have been undertaken, and quantification of the effectiveness of those efforts.

Our Response: The Service has cooperated with the MDC since 2010 to implement conservation efforts and studies to aid in the conservation and protection of the grotto sculpin. The Service provided \$35,000 to be used for sinkhole cleanouts, access agreements for known grotto sculpin caves, fencing projects, and surveys. The Service also contributed \$5,000 to the University of Central Arkansas to finalize and publish in a peer-reviewed journal the genetic analysis of the grotto sculpin. Additionally, the MDC collaborated with the Perry County Soil and Water District and the University of Central Arkansas in 2008–2009 to conduct preliminary water quality sampling and analysis. Using Service funds, the MDC has completed four cave access agreements, one stream exclusion fencing and spring development project, three sinkhole cleanouts, one dye-tracing study, four presence-absence studies for the grotto sculpin, and one landowner workshop. Studies to measure the efficacy of those implemented measures have not been undertaken by the Service or the State, but will be included in the recovery plan for the grotto sculpin.

(13) Comment: Several commenters asked about monitoring and reporting requirements for water quality, grotto sculpin populations, and implemented practices. Specifically, how will the monitoring occur, who will conduct the monitoring and prepare reports, to whom will reports be submitted, and how will the Service track improvements or deteriorations?

Our Response: Monitoring for the grotto sculpin will be conducted in coordination with the MDC, and water quality monitoring will be coordinated with the Missouri Department of Natural Resources. No specific monitoring protocols or regimes have been established. During the recovery planning process, we will design and implement a monitoring plan in coordination with the MDC, Missouri Department of Natural Resources, and participants in the Perry County Community Conservation Plan. Monitoring data will provide the

Service information on whether the threats are being adequately addressed and minimized.

(14) Comment: Numerous commenters asked questions about how private land in Perry County will be affected, including any restrictions to land use or stream use, including watering of livestock, impacts to property value, loss of access to property or non-permitted access to private property by agency personnel, effects on planting and harvesting crops, and any potential impacts to farm subsidies.

Our Response: According to section 9(a)(1) of the Act, is it unlawful to ‘take’ a federally listed species. The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. An activity can be conducted on private land as long as that activity does not cause ‘take’ of the grotto sculpin. Most current land and stream uses are compatible with the continued persistence and recovery of the grotto sculpin. Many activities will have no effect on the grotto sculpin, whereas others can be made compatible with the use of best management practices. If it is determined that a practice is incompatible with the continued existence of the grotto sculpin, meaning that even with implementation of best management practices the practice still causes threats to the species or its habitat, the Service will work closely with the Perry County Plan implementation committee and affected landowners to develop alternatives.

One of the threats to the grotto sculpin identified in the proposed rule was the decline in water quality because of sedimentation and the presence of chemicals, some of which are of agricultural origin. Farming practices that include best management practices, such as vegetative filter strips around groundwater inputs, and application of chemicals according to directions on the label likely will not require modification. The Perry County Plan identifies a need to review select current farming practices to ensure they are not impacting water quality and the grotto sculpin. Recommendations for modification of farming practices likely would be initiated through the Plan implementation committee.

Private landowners will not lose access to their property because a federally listed species is present on their property, farm subsidies will not be impacted, and, with the exception of law enforcement officials, no agency personnel or other private citizens are

allowed to access private property without the owners' permission.

(15) Comment: Numerous commenters asked questions about impacts to private property value.

Our Response: Listing decisions are made independently of economic considerations. However, an economic analysis considering the effects of critical habitat, including impacts on private property values, was completed and made available on May 7, 2013 (78 FR 26586).

(16) Comment: A commenter asked how activities in Perry County with a Federal nexus (Federal permit requirements or use of Federal funds) will be affected.

Our Response: Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species (referred to as the consultation process). Construction and development projects that involve Federal actions, permits, or funds require an environmental review that includes concurrence from the Service if Federal trust resources are present in the action area of the project. Addition of the grotto sculpin to the endangered species list is not anticipated to extend the review period for Federal projects beyond what already occurs. Conservation measures outlined in the Perry County Plan should avoid and minimize most potential impacts to the species. Projects will be reviewed on a case-by-case basis to determine if any additional measures are necessary to avoid take of the species.

Meyer (1995, p. 16) reviewed the record of 18,211 endangered species consultations by the Service and National Marine Fisheries Service from 1987 to 1991 and found that only 11 percent (2,050) were handled under formal consultation, meaning the other 89 percent proceeded on schedule and without interference. Of the 2,050 formal consultations, 181 (less than 10 percent) concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. Most of these 181 projects proceeded with some modification in design and construction. Ultimately, 99 percent of the projects reviewed under the Act eventually proceeded unhindered or with moderate additional time and costs.

(17) Comment: Several commenters asked questions about various aspects of water quality. These comments generally centered on five subject areas and are addressed below.

(17a) Comment: Commenters asked for information on water quality and chemicals. They requested information about any recent water sampling since the Fox *et al.* (2010) study, human or livestock health issues related to chemicals present in the water samples taken in 2008, the possible origin of those chemicals, and the location of data collected from the water quality study.

Our Response: No large-scale water quality studies have been initiated since the Fox *et al.* (2010) study. Fox *et al.* (2010) noted that chemicals detected in water samples were from agricultural pest management activities. The authors of this study hold the data and results of the analysis. A copy of the Fox *et al.* (2010) manuscript was provided to the Perry County Plan committee and is available online and at the Columbia Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

(17b) Comment: Commenters asked for information pertaining to agricultural chemicals, specifically if there will be restrictions on agricultural chemicals and if contract sprayers will be more accountable to apply pesticide in a more precise way.

Our Response: Federal control of pesticides is provided under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). All pesticides used in the United States must be registered (licensed) by the Environmental Protection Agency (EPA). Registration assures that pesticides will be properly labeled and that, if used in accordance with specifications on the label, will not cause unreasonable harm to the environment. By law, use of each registered pesticide must be consistent with use directions contained on the label or labeling.

(17c) Comment: Commenters provided and asked for information pertaining to water quality and sewer systems. One commenter provided information on the annexation of a subdivision into the city of Perryville and subsequent inclusion into the city sewer system. Two other towns in Perry County developed a joint public sewer system. The Perry County Health Department has developed automated notification systems that inform new homeowners and businesses of sewage laws. Commenters inquired about any changes to the septic requirements for landowners owning more than 3 acres and whether or not current systems would have to be replaced.

Our Response: We have included information provided about updates to sewer systems in this final rule. The Service is not aware of forthcoming

changes to septic requirements for landowners who own more than 3 acres, and any changes that occur will be independent of this listing action. The Perry County Plan identifies the need to address potential problems with private septic systems. Recommendations for modification of private septic systems likely would be initiated through the Plan implementation committee.

(17d) Comment: Commenters provided information and asked questions regarding water quality and municipal sinkhole management. Commenters wanted to know how the listing action would affect the City's ability to maintain sinkholes and about any potential methods for mitigating stormwater draining into caves.

Our Response: The City of Perryville, Missouri is developing a sinkhole management policy as part of the Perry County Community Conservation Plan. This policy will address sinkhole stabilization, stormwater management, and water quality issues.

(18) Comment: Commenters provided information and asked questions regarding vertical drains. Commenters wanted information about best management practices pertaining to vertical drains, cost-share used for installation and maintenance of vertical drains, and subsequent compliance with practice standards.

Our Response: As outlined in the proposed rule, if landowners receive cost-share assistance from the NRCS, they must follow practice standards to remain in compliance with the conservation program. Those practice standards include vegetative buffers that act as filters for water before it enters the standpipe (NRCS 2006a, pp. 1–2; 2006b, pp. 1–3). If landowners are self-funding the installation of vertical drains, they are not required to follow practice standards and, therefore, might not install vegetative filter strips. Improving compliance under current program standards and broader application of best management practices to landowners who do not participate in cost-share programs were identified as action items in the Perry County Community Conservation Plan.

(19) Comment: Numerous commenters provided information on the use of current practices that have less environmental impacts than prior historical practices, including information on improvements to historical soil and water conservation actions and improved sewage systems.

Our Response: The Service has incorporated this information in this final rule, where appropriate.

(20) Comment: Commenters asked if there were existing management plans

or guidance for managing sinkholes and karst and if there were any special regulations regarding sinkholes.

Our Response: The Service does not have any general guidance on managing sinkholes in karst areas. The MDC has developed best management practices for the Perry County Karst. As addressed in both the proposed listing rule and this final rule, State laws that apply to sinkholes, water quality, and waste management include the Missouri Clean Water Law of 1972 and the Missouri State Waste Management Law of 1972. Regulations under the Federal Clean Water Act of 1972 also would apply if a point-source for the pollution could be determined. County and municipal policies, such as the proposed Sinkhole Improvement Plan in Perryville, Missouri (Perry County 2013, pp. 14–16), also guide sinkhole management.

(21) *Comment:* Commenters asked about the validity of comparing a karst sinkhole system and underground water supplies and how the Service plans to determine contributing water sources in the future.

Our Response: In a karst system, the drainage system provided by sinkholes and underground streams are not always exclusive of each other and thus potential connections need to be considered. The study by Moss and Pobst (2010, pp. 146–160) delineated recharge areas for the known grotto sculpin cave systems. This information can be used to determine what surface waters contribute to the cave systems.

(22) *Comment:* Commenters asked about best management practices (BMPs), including how they will be determined, implications for building and road construction, and implementation in rural areas of the sinkhole plain.

Our Response: Best management practices have been developed for the federally threatened Ozark cavefish in Missouri. The BMPs being developed by the MDC and the Service in cooperation with the Perry County Plan will be similar, but tailored to the landscape and land use of Perry County as well as specific threats to the grotto sculpin and Perry County Karst. Best management practices for Perry County will include vegetated buffers around sinkholes and vertical drains—the ideal width is 50 ft (15 m), but the Service acknowledges that installation of a buffer of this width might not be feasible in all situations, such as urban areas with existing infrastructure. Standard methods of erosion control for building and road construction will continue to be recommended BMPs.

(23) *Comment:* Commenters asked questions about the genetics and species

status of the grotto sculpin and whether or not there were other federally listed species in the genus *Cottus*.

Our Response: Adams *et al.* (2013, pp. 484–494) determined that the grotto sculpin (*Cottus specus*) was a unique species based on genetics and morphology. Other *Cottus* species that have been afforded special protections include three threatened *Cottus* species listed under the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) and the federally threatened pygmy sculpin (*C. paulus*) in Calhoun County, Alabama.

(24) *Comment:* Commenters asked questions about potential threats to the grotto sculpin and its habitat by caving and cavers and whether caving and spelunking will be affected by the listing.

Our Response: The Service does not believe that caving and spelunking are incompatible with the continued existence of the grotto sculpin or that these activities are threats to the quality of its habitat, as long as cavers and spelunkers conduct these activities in a responsible manner. For example, minimize disturbance in known grotto sculpin caves during spawning periods and abide by a code of ethics for cavers, such as the Minimum Impact Caving Code that can be found at www.caves.org. Furthermore, the Service strongly encourages all cavers and spelunkers in Missouri to abide by the National White-Nose Syndrome Decontamination Protocol, which is readily available on the internet. Two federally listed species of bats are present in the caves of Perry County, and this protocol should be implemented to reduce the risk of transmission of the fungus to other bats and cave habitats. The Perry County Plan has included this recommendation for cavers and spelunkers in Perry County cave systems.

(25) *Comment:* Several commenters asked about the process for delisting a species that has been added to the List of Endangered and Threatened Wildlife.

Our Response: Recovery plans for listed species, developed by the Service in cooperation with stakeholders, identify delisting and downlisting goals. When a species achieves its delisting criteria, the Service considers removing it from the Federal List of Endangered and Threatened Wildlife and Plants. Likewise, when a species achieves its downlisting criteria, the Service considers changing its status from endangered to threatened.

To delist or downlist a species, we follow a process similar to when we consider a species for listing under the Act. We assess the population and its

recovery achievements, the existing threats, and seek advice from a variety of species experts. To assess the existing threats, the Service must determine that the species is no longer threatened or endangered based on five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

If the Service determines that the threats have been sufficiently reduced, then we may consider delisting or downlisting the species. When delisting or downlisting a species, we first propose the action in the **Federal Register**. At this time, we also seek comments from independent species experts, other Federal agencies, State biologists, and the public. After analyzing the comments received on the proposed rulemaking, we decide whether to complete the proposed action or maintain the species status as it is. Our final decision is announced in the **Federal Register**. The comments received and our response to them are addressed in the final rule.

(26) *Comment:* Commenters asked questions about the inadequacy of existing laws and regulations, including issues with lack of enforcement instead of lack of regulation.

Our Response: We agree that existing regulations suffer from lack of enforcement and lack of compliance, as opposed to the absence of laws and regulations. We have revised our discussion under Factor D, the inadequacy of existing regulatory mechanisms, in this final rule to reflect this.

(27) *Comment:* Several commenters asked about the population size and population trajectory of the grotto sculpin, including any information on carrying capacity of the species' habitat, possible presence of more individuals in inaccessible areas of caves, and other federally listed cavefish.

Our Response: Declining population trends are only one of many factors on which the Service bases decisions on listing determinations. In the case of the grotto sculpin, the Service did not base the proposed listing on a known decline in number of individuals, but rather a known set of current and ongoing threats, restricted population distribution, and known mortality events. The carrying capacity of Perry County karst habitats or similar habitats elsewhere is unknown, but caves are known to be energy-limited habitats and

most cave-obligate species do not occur in large numbers. It is probable that grotto sculpin occur in inaccessible parts of currently known occupied cave systems, as well as other cave systems in the Perry County Karst where we currently have no documented occurrences.

One other federally listed cavefish species occurs in Missouri, the Ozark cavefish. This species similarly occurs in low densities in energy-limited cave habitats in southwest Missouri, Arkansas, and Oklahoma. The Ozark cavefish was designated as a federally threatened species in 1984 (49 FR 43965–43969, November 1, 1984).

(28) *Comment:* Many commenters asked how Federal listing of a species could affect the economy and development activity in Perry County.

Our Response: Listing decisions are made independently of economic considerations. However, an economic analysis considering the effects of critical habitat, including effects on Perry County, was completed and made available in the **Federal Register** on May 7, 2013 (78 FR 26586).

(29) *Comment:* One commenter questioned the need to federally list the grotto sculpin because the species was already designated as a species of conservation concern by the MDC and the agency had developed best management practices to improve water quality and habitat for the species.

Our Response: Designating the grotto sculpin as a species of conservation concern by the MDC provides no requirement to implement any conservation measures through their agency regulations. While the Service lauds the development and implementation of best management practices for the grotto sculpin, we currently have insufficient evidence that the implementation of such measures have been adequate to reverse the degraded water quality and that poor water quality no longer presents a threat to this species.

(30) *Comment:* One commenter expressed opposition to any conservation measures that included the need to increase and maintain vegetative buffers around vertical drains.

Our Response: While the proper width of vegetative buffers around vertical drains is variable and can be considered further among various conservation partners, adequate vegetation around sinkhole openings is necessary to enhance water quality, especially in crop fields and pastures where silt, chemicals, and fertilizers can be directly deposited into underground karst through surface runoff.

Summary of Changes From Proposed Rule

We fully considered comments from the public and peer reviewers on the proposed rule to develop this final listing of the grotto sculpin. We also considered the conservation benefits of the Perry County Community Conservation Plan in our final decision. This final rule incorporates changes to our proposed listing based on comments received that are discussed above and on newly available scientific and commercial information. We made some technical corrections and updated the formal recognition of the grotto sculpin as a unique species.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The grotto sculpin is a cave-adapted species that is endemic to karst habitats that provide consistent water flow, high organic input, and connection to surface streams, which allow for seasonal migrations to complete its life cycle. Nearly all of the land within the known range of the grotto sculpin is privately owned. Ball Mill Resurgence Natural Area (19.5 ac (7.9 ha)) and Keyhole Spring and Resurgence near Blue Spring Branch are owned by the L–A–D Foundation (a private foundation dedicated to sustainable forest management and protection of natural and cultural areas in Missouri (<http://pioneerforest.org>) that are managed by the MDC). The municipality of Perryville is in the Central Perryville Karst Area and is within the recharge area of Crevice Cave. Thirty-six percent (15.6 km² (6.02 mi²)) of Perryville's total

area of 43 km² (16.6 mi²) lies within the karst area, whereas 24 percent (10.4 km² (4.02 mi²)) lies within the southern portion of the recharge area of Crevice Cave (recharge area defined by Moss and Pobst 2010 pp. 151–152).

The karst in Perry County is characterized by thousands of sinkholes (Vandike 1985, p. 1) and over 700 caves (Fox *et al.* 2009, p. 5). Water quality in karst areas is highly vulnerable and can severely decline with rapid transmission of contaminants from the surface to the aquifer (Panno and Kelly 2004, p. 230). Moss and Pobst delineated recharge areas for known and potential grotto sculpin caves (2010, pp. 146–160) and evaluated the vulnerability of groundwater in the recharge areas to contamination (2010, pp. 161–190). Because the grotto sculpin is dependent not only on caves, but uses surface habitat in addition to caves, Moss and Pobst (2010, p. 161) evaluated hazards within and adjacent to recharge areas to best characterize impairment of cave and surface streams. They found all the recharge areas to be highly vulnerable to contamination and contain hazards from historical sinkhole dumps, agricultural practices without universal application of best management practices, ineffective private septic systems, and roads with contaminated runoff (Burr *et al.* 2001, p. 294; Moss and Pobst 2010, p. 183). They noted additional hazards in the recharge area for Crevice Cave not found elsewhere, such as hazardous waste generators, wastewater outflows, stormwater outflows, and underground storage tanks for hazardous waste, that compound potential threats to groundwater and drinking water (Moss and Pobst 2010, p. 184). Impacts to groundwater are not proportional to the area impacted in such a highly vulnerable landscape—a localized pollution event can impact all aquatic habitats downstream.

Based on data from the Missouri Department of Natural Resources (2010, unpaginated), the Service calculated that there are approximately 2 sinkholes per km² (6 per mi²) in Perry County and 7 sinkholes per km² (17 per mi²) in the Central Perryville and Mystery–Rimstone karst areas. Recharge areas around grotto sculpin caves contain up to four times the number of sinkholes compared to other parts of the county or other karst areas. Cave recharge areas in the Central Perryville Karst contain an average of 8 sinkholes per km² (22 per mi²), whereas those in the Mystery–Rimstone Karst contain an average of 4 per km² (11 per mi²) (Missouri Department of Natural Resources 2010, unpaginated). Water flow in Perry

County karst systems occurs by way of surface features, such as sinkholes and losing streams, as well as connectivity to the underlying aquifer (Aley 1976, p. 11; Fox *et al.* 2009, p. 5). Without adequate protection, sinkholes can funnel storm-runoff directly into cave systems in a short period of time (Aley 1976, p. 11; White 2002, p. 88; Fox *et al.* 2010, p. 8838).

Illegal Waste Disposal and Chemical Leaching

At least half of the sinkholes in Perry County have been or are currently used as dump sites for anthropogenic waste (Burr *et al.* 2001, p. 294). Although it is illegal to dump waste in open sites in Missouri, the practice continues today—sinkholes continue to be used as dump sites for household wastes, tires, and occasionally dead livestock (http://dnr.mo.gov/env/swmp/dumping/enf_instruct.htm; Pobst 2012, pers. comm.). Moss and Pobst (2010, p. 169) observed that most historical farms in the sinkhole plain had at least one sinkhole that contained household and farm waste. Waste material found in sinkholes includes, but is not limited to, household chemicals, sewage, and pesticide and herbicide containers (Burr *et al.* 2001, p. 294). Fox *et al.* (2010, p. 8838) found that Perry County cave streams were contaminated by a mixture of organic pollutants that included both current-use and legacy-use pesticides and their degradation products. They found high concentrations of heptachlor epoxide and trans-chlordane, which are degradation products of the legacy-use pesticides heptachlor and chlordane (Fox *et al.* 2010, p. 8839). Heptachlor and chlordane were banned in 1988, but can persist in the environment through storage in sediments above or below ground or leaking containers in sinkholes (ATSDR 1994a, unpaginated; ATSDR 2007a, unpaginated). In water, heptachlor readily undergoes hydrolysis to a compound, which is then readily processed by microorganisms into heptachlor epoxide (ATSDR 2007b, p. 98).

Heptachlor and chlordane are highly persistent in soils, are almost insoluble in water, and will enter surface waters primarily through drift and surface runoff (ATSDR 1994a, unpaginated; ATSDR 2007a, unpaginated). Although not specifically tested on the grotto sculpin, both heptachlor and chlordane are highly toxic to most fish species tested, including warm-water species such as bluegill (*Lepomis macrochirus*) and fathead minnow (*Pimephales promelas*) (Johnson and Finley 1980, pp. 19, 43–44). Heptachlor caused degenerative liver lesions, enlargement

of the red blood cells, inhibited growth, and mortality in bluegill (Andrews *et al.* 1966, pp. 301–305). Heptachlor, heptachlor epoxide, and chlordane have been shown to bioaccumulate in aquatic organisms such as fish, mollusks, insects, plankton, and algae (ATSDR 1994b, p. 172; ATSDR 2007b, p. 89).

Chemical leaching in sinkholes likely is a major contributor of legacy-use pesticides, such as dieldrin, in aquatic habitats (Fox *et al.* 2010, p. 8840). Dieldrin, a domestic pesticide used in the past to control corn pests and banned by the USDA in 1970 (ATSDR 2002, unpaginated), was found at levels that exceeded ambient water quality criterion by 17 times in Mertz Cave and Thunderhole Resurgence (Mystery-Rimstone Karst Area) (Fox *et al.*, p. 8839). Dieldrin is a known endocrine disruptor that bioaccumulates in animal fats, especially those animals that eat other animals and, therefore, is a concern for the grotto sculpin because it is the top predator in its cave habitat (ATSDR 2002, unpaginated; Fox *et al.* 2010, p. 8839). The grotto sculpin feeds on several species of cave amphipods, including *Gammarus* sp. (Gerken 2007, pp. 16–17; Fox *et al.* 2010, p. 8839). Dieldrin has been detected in *G. troglophilus* through tissue bioassays (Taylor *et al.* 2000, p. 10). Tarzwell and Henderson (1957, pp. 253–255) found that dieldrin was toxic to fathead minnow, bluegill, and green sunfish (*Lepomis cyanellus*). Whereas the species exhibited differences in susceptibility, individuals of all species tested ultimately experienced loss of equilibrium followed by death (Tarzwell and Henderson 1957, p. 255).

Sinkholes have also been used as disposal sites for dead livestock (Fox *et al.* 2009, p. 6; Moss and Pobst 2010, p. 170). Animal carcasses dumped into sinkholes and cave entrances are potentially diseased and could carry pathogens that could be unintentionally introduced into the groundwater system. Decomposing animals in source water for cave streams also can lower the dissolved oxygen and negatively impact aquatic organisms.

Contaminated Water

In cave streams sampled by Fox *et al.* (2010, p. 8838), time-weighted average water concentrations of 20 chemicals were at levels above method detection limits; 16 of the 20 chemicals originated from agricultural pest management activities. Acetochlor, diethyl-ethyl, atrazine, and desethylatrazine (DEA) were detected at all sites during both May and June sampling periods. Pyrene, metolachlor, DEET, and pentachloroanisole were detected at all

sites during sampling periods (Fox *et al.* 2010, p. 8838). The list of potential impacts of these chemicals on fish is long, and includes reductions in olfactory sensitivity, immune function, and sex hormone concentrations; endocrine disruption; and increased predation and mortality due to adverse effects to behavior (Alvarez and Fuiman 2005, pp. 229, 239; Rohr and McCoy 2010, p. 30). The ubiquitous presence of current-use pesticides, such as atrazine, was not surprising based on the extensive agricultural land use in Perry County.

Atrazine has been the most frequently detected herbicide in ground and surface waters in Perry County (Fox *et al.* 2010, p. 8838) and in a similar karst and agricultural landscape in Boone County, Missouri (Lerch 2011, p. 107); levels of corn production were similar in the two counties. Even at concentrations below EPA criteria for protection of aquatic life, atrazine has been shown to reduce egg production and cause gonadal abnormalities in fathead minnows (Tillitt *et al.* 2010, pp. 8–9). Sex steroid biosynthesis pathways and gonad development in male goldfish (*Carassius auratus*) were impacted by atrazine in concentrations as low as 1 nanogram per liter (ng/L) (Spano *et al.* 2004, pp. 367–377). Concentrations of atrazine in Perry County ranged from 20 to 130 ng/L (Fox *et al.* 2010, p. 8838). Li *et al.* (2009, pp. 90–92) showed that environmentally relevant concentrations of acetochlor can decrease circulating thyroid hormone levels, decrease expression of thyroid hormone-related genes, affect normal larval development, and affect normal brain development. Pyrene is known to cause anemia, neuronal cell death, and peripheral vascular defects in larval fish (Incardona *et al.* 2003, p. 191). Wan *et al.* (2006, pp. 57–58) considered metolachlor to be slightly to moderately toxic to freshwater amphibians, crustaceans, and salmonid fishes. Wolf and Moore (2010, pp. 457, 464–465) demonstrated that sublethal concentrations of metolachlor adversely affected the chemosensory behavior of crayfish and likely impacted their ability to locate prey. These researchers also noted that this herbicide also caused physiological impairment that likely impacted locomotory behavior and predator avoidance responses. Due to the importance of chemosensory organs to the grotto sculpin, the presence of metolachlor in occupied streams may impact this fish's ability to locate prey.

Additional potential adverse effects to grotto sculpin from contaminants include increased susceptibility to fish

diseases (Arkoosh *et al.* 1998, p. 188); increased immunosuppression (Arkoosh *et al.* 1998, p. 188); disruption of the nervous system by inhibition of cholinesterase (Hill 1995, p. 244); and an increase in acute or chronic stress resulting in reduced reproductive success, alterations in blood and tissue chemistry, diuresis, osmoregulatory dysfunction, and reduction in growth (Wedemeyer *et al.* 1990, pp. 452–453). As a result, water contamination from various sources of point and non-point source pollution poses a significant, ongoing threat to the grotto sculpin.

Vertical Drains

Contaminant problems with sinkholes are further exacerbated by the presence and continued installation of vertical drains across the agricultural landscape in Ste. Genevieve and Perry Counties (Perry County Soil and Water Conservation District (PCSWCD) 2012, unpaginated). Vertical drains, also known as stabilized sinkholes or agricultural drainage wells (ADWs), are defined by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) as "a well, pipe, pit, or bore in porous, underground strata into which drainage water can be discharged without contaminating groundwater resources" (NRCS 2006a, p. 1). This conservation practice is meant to reduce erosion by facilitating drainage of surface or subsurface water and often result in more land available to the farmer. As of 2012, the recharge areas for known and likely grotto sculpin habitat in the Central Perryville and Mystery–Rimstone karst areas contained an average of 2.5 vertical drains per km² (7 per mi²), with the highest concentrations in the recharge areas for Keyhole Spring, Ball Mill Spring, and Mystery Cave (PCSWCD 2012, unpaginated). New vertical drains continue to be installed at a rate consistent with the installation rate that occurred in the 1990s, with approximately 40 new vertical drains installed at 15 properties in Perry County in 2011 (PCSWCD 2012, unpaginated).

The NRCS (2006a, p. 2) noted that "significant additions to subsurface water sources may raise local water tables or cause undesirable surface discharges down-gradient from the vertical drain." The impact of vertical drains on groundwater has been studied on a limited basis and studies have directly linked groundwater and drinking water contamination with vertical drains (EPA 1999, unpaginated). According to the conditions set by the NRCS, this practice can only be applied

when it will not contaminate groundwater or affect instream habitat by reducing surface water flows (NRCS 2010, p. 1). The NRCS provides a cost-share of up to 75 percent for installation of vertical drains to stop erosion (NRCS 2010; 2011; 2012) and has conservation practice and construction standards that include secure placement of the standpipe, appropriate fill material around the drainage pipe, and a filter system around the drain (NRCS 2006a, pp. 1–2; 2006b, pp. 1–3). Although the USDA requires landowners to install a minimum of 7.6 m (25 ft) of grassed buffer around vertical drains to minimize erosion and the migration of nutrients and contaminants into the groundwater system, this guideline is not strictly followed (Moss and Pobst 2010, p. 170). Because vertical drains are potential targets for illegal dumping of liquid hazardous wastes (Fox *et al.* 2010, p. 8839) and there is an absence of adequate buffers around some vertical drains, the migration of sediment and contaminants is easily facilitated (Moss and Pobst 2010, p. 171).

Vertical drains allow contaminated water to flow directly into karst and groundwater systems without naturally occurring filtration (Pobst and Taylor 2007, p. 69) unless protective standards are implemented. Vertical drains act as conduits for all surface water, contaminants, and sediment directly from the surface through the bedrock into underground caves, streams, and karst voids (Pobst and Taylor 2007, p. 69). Such a scenario is supported by Fox *et al.*'s (2010, pp. 8835–8840) contaminant study in the karst region of Perry County. The long list of harmful chemicals detected in the Fox *et al.* (2010, pp. 8835–8840) study is likely due to the migration of these contaminants directly from surface fields into the underground karst system through vertical drains and sinkholes.

Urbanization and Development

In addition to contamination from point sources of pollution and improper trash disposal, water quality of sculpin habitats is negatively impacted by urban growth of Perryville, located in the recharge area for Crevice Cave (Moss and Pobst 2010, p. 164). Crevice Cave had the lowest amount of cropland and grassland within its recharge and the most chemical detections. In contrast, Mystery Cave had the most cropland and grassland and fewest chemical detections (Fox *et al.* 2010, p. 8840). The only hazardous waste facility in the Central Perryville and Mystery–Rimstone karst areas is located in Perryville. The facility is permitted by the Missouri Department of Natural

Resources as a large-volume hazardous waste generator. Additional hazards in Perryville include four other hazardous waste generators; nine underground storage tanks that could leak petroleum products; two National Pollutant Discharge Elimination System (NPDES) permits for wastewater outfalls; and seven NPDES permits for stormwater discharge, leaking sewer lines, or lines that remain plumbed into the caves below (Missouri Department of Natural Resources (MDNR) 2010, unpaginated).

Most of the runoff water in areas that recharge aquatic habitats for the grotto sculpin moves quickly into the groundwater system with ineffective natural filtration, and the same is true for waste waters from septic systems (Aley 2012, pers. comm.).

Contamination of groundwater by septic systems in karst areas has been documented on multiple occasions (Simon and Buikema 1997, pp. 387, 395; Panno *et al.* 2006, p. 60) because septic tank systems are poorly suited to karst landscapes (Aley 1976, p. 12). Panno and Kelly (2004, p. 229) listed septic systems as potential contributors of excess nitrogen to streams in the karst region of southern Illinois. Septic systems in the sinkhole plain can be direct conduits for introduction of septic effluent directly into the shallow karst aquifer (Panno *et al.* 2001, p. 114). In a karst area in southwest Missouri, poorly designed sewage treatment lagoons were allowing effluent from a small, rural school to seep into the only known location for the federally listed Tumbling Creek cavesnail (*Antrobia culveri*) (Aley 2003, unpaginated).

Most of the rural residents in the Central Perryville and Mystery–Rimstone karst areas use onsite septic systems (for example, in the Mystery Cave area) (Aley 1976, p. 12). The City of Perryville has a municipal sewer system and wastewater treatment plant. Perryville recently annexed a subdivision that previously was not tied into the wastewater treatment network and provided them with sufficient wastewater treatment. Septic system failures occur in karst areas of southeast Missouri, such as those in Perry County, but detections are problematic because most failures are not obvious from the surface, but instead occur underground into the groundwater system (Aley 2012, pers. comm.). One instance of a septic system failure was observed by Aley (1976, p. 12) near Mystery Cave. Sewage was discharged to a septic field within 100 ft (30.5 m) of the cave entrance and contaminated the waters of the Mystery Cave system. Water samples collected by the MDC within the range of the grotto sculpin indicated the presence of

the bacteria *Escherichia coli* at high levels, which might correspond to high inputs of phosphorus from septic systems (Pobst 2010, pers. comm.). Taylor *et al.* (2000, pp. 13–16) found that fecal contamination of karst groundwater is a serious problem in southeast Missouri. Among sampling locations in southeast Missouri, water samples were taken from streams and springs in Perry County that included sites within the range of the grotto sculpin (Mertz Cave, Running Bull Cave, Thunderhole Resurgence, and Cinque Hommes Creek) (Taylor *et al.* 2000, pp. 48–49). High fecal bacterial loads were found in the groundwater of grotto sculpin habitats and can be a combination of both human and animal wastes (Taylor *et al.* 2000, p. 14).

No animal feeding operations or concentrated animal feeding operations are present in the recharge areas of grotto sculpin habitat (MDNR 2010), but there are smaller livestock feeding areas that are in sinkholes or near sinkhole drainage points (Aley 1976, p. 12; Moss and Pobst 2010, p. 166). Large amounts of manure can be flushed through sinkholes and carry associated bacteria and pathogens into cave streams. Waste from mammalian sources, including humans and livestock, can increase nutrient loads and lower dissolved oxygen in the groundwater (Simon and Buikema 1997, p. 395; Panno *et al.* 2006, p. 60). Hypoxia resulting from eutrophication due to increases in nutrient load (especially phosphorus) can lead to mortality and sublethal effects by reducing the availability of oxygen needed by fish for locomotion, growth, and reproduction (Kramer 1987, p. 82; Gould 1989–1990, p. 467). Barton and Taylor (1996, p. 361) reported that low dissolved oxygen levels can cause changes in cardiac function, increased respiratory and metabolic activity, alterations in blood chemistry, mobilization of anaerobic energy pathways, upset in acid-base balance, reduced growth, and decreased swimming capacity of fish.

Sedimentation

Concerns with sedimentation (actual deposition of sediment, not the transport) and wash load (portion of the sediment in transport that is generally finer than the sediment) (as defined by Biedenharn *et al.* 2006, pp. 2–6) relative to impacts to grotto sculpin habitat are primarily the transport of contaminants and the deposition of excessive amounts of sediment in cave streams. Soils in the Central Perryville and Mystery–Rimstone karst areas are dominated by highly erosive loess. Sediment transported into the karst groundwater

can include agricultural chemicals that are bound to soil particles as evidenced by Fox *et al.*'s (2010, p. 8840) findings. Fox *et al.* (2010, p. 8840) determined that turbidity of streams in grotto sculpin caves in Perry County was positively correlated with total chemical and DEA concentrations. Additionally, Gerken and Adams (2007, p. 76) noted that siltation was a major problem in grotto sculpin sites and postulated that silt likely reduced habitat available to this fish.

Excessive siltation in aquatic systems can be problematic for fish because it can change the overall structure of the habitat (Berkman and Rabeni 1986, pp. 291–292). Silt can fill voids in rock substrate that are integral components of habitat for reproduction and predator avoidance. The grotto sculpin occurs in habitats with some level of sediment deposition (Gerken 2007, pp. 16–17, 23–25). However, siltation beyond what occurred historically could limit the amount of suitable habitat available (Gerken 2007, pp. 27–28; Gerken and Adams 2007, p. 76), and the threshold of siltation that renders cave habitat unsuitable for grotto sculpin has not yet been determined. Many farmers in Perry County employ soil conservation methods, such as no-till planting and removal of highly erodible land from production, to reduce erosion in agricultural areas.

Industrial Sand Mining

Industrial sand is also known as “silica,” “silica sand,” and “quartz sand,” and includes sands with high silicon dioxide content. Silica sand production in the United States was 29.3 million metric tons (Mt), an increase of 5.3 Mt from 2009 to 2010 (U.S. Geological Survey (USGS) 2012, p. 66.6). The Midwest leads the Nation in industrial sand and gravel production, accounting for 49 percent of the annual total (USGS 2012, p. 66.1). One end-use of silica sand is as a propping agent for hydraulic fracturing. Higher production of silica sand in 2010 was primarily attributable to an increasing demand for hydraulic fracturing sand because of continuing exploration and production of natural gas throughout the United States. Conventional natural gas sources have become less abundant, leading drilling companies to turn to deep natural gas and shale gas. Of the 29.3 Mt of silica sand sold or used in the United States, 12.1 Mt (41 percent) was used for hydraulic fracturing in the petroleum industry (USGS 2012, p. 66.10). As of 2010, the price per ton for industrial silica sand was \$45.24 in the United States (USGS 2012, p. 66.11). In addition to new facilities, existing

hydraulic fracturing sand operations increased production capacity to meet the surging demand for sand.

Mining for silica sand in Missouri occurs in the St. Peter Sandstone in Jefferson, Perry, and St. Louis Counties (USGS 2011, p. 27.2). The St. Peter Sandstone formation is directly adjacent to (to the west) the Joachim Dolomite formation that forms the karst habitat for the grotto sculpin in Perry County. The interface between these two formations generally comprises the western borders of the Central Perryville and Mystery–Rimstone karst areas. Four companies in Missouri produced 0.9 Mt of high-purity sand from the St. Peter Sandstone formation (USGS 2011, p. 27.2). The existing operation in Perry County lies 5.6 km (3.5 mi) northwest of Perryville and involves open pit mining on 101 ha (250 acres). This producer specializes in 40 to 70 and 70 to 140 size-grades that were used by the oil and gas well-servicing industry as a hydraulic fracture propping agent in shale formations (USGS 2010, p. 27.2).

Sand mining is typically accomplished using open pit or dredging methods with standard mining equipment and without the use of chemicals. Sand can be mined from outcrops or by removing overburden to reach subsurface deposits. Environmental impacts of sand mining are primarily limited to disturbance of the immediate area. The current operation in Perry County is partially within the Joachim Dolomite formation and at the western edge of the sinkhole plain with approximately four sinkholes occurring in the immediate vicinity. Erosion of soil and disturbed overburden could occur and increase the sediment loads in adjacent surface waters and cave streams via runoff. For example, a portion of the existing mining operation is within the Bois Brule watershed. Sediment-laden runoff could enter Blue Spring Branch, one of the surface streams occupied by the grotto sculpin.

As described above, sedimentation can change the structure of grotto sculpin habitat and negatively impact reproduction and predator avoidance. Presence of the current facility, only 0.5 km (0.3 mi) and 1.6 km (1 mi) from the Central Perryville Karst and Crevice Cave recharge area, respectively, shows that such operations can and do occur in the Joachim Dolomite formation and immediately adjacent to grotto sculpin habitat. We currently are unaware of any plans for new facilities or expansions of current facilities. However, based on the presence of one existing operation, the occurrence of St. Peter Sandstone in Perry County, as

well as recent growth of the hydraulic fracturing industry and associated increased demand for silica sand, it is likely that increased sand mining activity will occur in the future in areas where the grotto sculpin occurs. We consider sand mining to be a potentially significant threat to the species in the future.

Summary of Factor A

The threats to the grotto sculpin from habitat destruction and modification are occurring throughout the entire range of the species. All of the recharge areas for caves occupied by the grotto sculpin are highly vulnerable and contain hazards from historical sinkhole dumps, agricultural practices without universal application of best management practices, vertical drains, ineffective private septic systems, excessive sediment deposition in underground aquatic habitats, and degraded runoff from roads. Hazardous waste facilities, outfalls for waste and storm water, and underground storage tanks are found in the recharge area for Crevice Cave that are not found in other parts of the species' range. Water contamination from various sources of point and non-point source pollution poses a significant, ongoing threat to the grotto sculpin. Water flow in karst systems occurs by way of surface features, such as sinkholes and losing streams, as well as connectivity to the underlying aquifer. Sinkholes can funnel storm-runoff that carries contaminants directly into cave systems in a short period of time and severely degrades water quality. The population-level impacts from these activities are expected to continue into the future.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

When considering the listing of a species, section 4(b)(1)(A) of the Act requires us to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American Tribes and organizations. Also, Federal, Tribal, State, and foreign recovery actions (16 U.S.C. 1533(f)) and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying these efforts, under the Act and our policy implementing this provision, known as Policy for Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003), we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan establishes specific conservation

objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely to improve the species' viability at the time of the listing determination. In general, in order to meet these standards for the grotto sculpin, conservation efforts must, at a minimum, provide outreach and education to stakeholders, report data on water quality and existing populations, describe activities taken to improve water quality, describe activities taken toward conservation of the species, demonstrate either through data collection or best available science how these measures will alleviate threats, provide for a mechanism to integrate new information (adaptive management), and provide assurances of implementation (*e.g.*, funding and staffing mechanisms).

Below, we consider conservation measures that were discussed in documents submitted during the public comment period or known to us that could reduce threats under Factor A.

Perry County Community Conservation Plan

Perry County submitted a conservation plan focused on addressing threats to the grotto sculpin through a comprehensive, collaborative, and voluntary effort. The Perry County Community Conservation Plan (Plan) (PCCEEC 2013, entire) was written by representatives of local government, organizations, and businesses, as well as representatives of private landowners. To date, 47 private entities and businesses, 6 County and Municipal government entities, 5 State government entities, and 1 Federal agency are participating in the local conservation effort. Although the Plan has prioritized activities in known grotto sculpin habitat, the intention is that the activities outlined in the Plan will be implemented on a watershed scale to accomplish greater water quality protection and improvement. The mission statement of the Plan is to "Improve water quality throughout the Perry County Karst Watershed and Perry County through outreach and education." The goal of the Plan is to initiate and implement good land stewardship to promote good water quality and a sustainable biota through continuing community outreach, educational efforts, civic engagement, and interagency support. The Plan was developed in close coordination with the Service and MDC.

Environmental concerns addressed by the conservation efforts are to: (1) Minimize movement of surface chemicals to groundwater; (2) Review application of vertical drain practice and sinkhole stabilization or protection; (3) Improve vertical drain installation and maintenance; (4) Assure proper installation and function of septic tank or sewage lagoons; (5) Improve runoff control along roadways; (6) Improve management of wastewater outflows; (7) Improve management of stormwater outflows; (8) Ensure chemical spill plans are available; (9) Ensure proper installation and maintenance of storage tanks; (10) Improve animal waste management; (11) Minimize or avoid livestock waste in streams and sinkholes; (12) Dispose of animal carcasses properly; and (13) Minimize erosion and sediment transport to aquatic systems. The plan also includes a list of programs that are in place that will be continued, expanded, and improved.

The community of Perry County is committed to, and invested in, implementing the Perry County Plan. Time and labor to create and implement the Plan in the first 90 days amounted to approximately \$250,000. This is an ongoing investment of time and finances. The City of Perryville has allocated \$62,000 annually in their budget for sinkhole cleanout, maintenance, and repair. The committee is working to identify additional state and national partners and resources to support the Plan.

The Perry County Plan addresses threats to the grotto sculpin through education of County residents, specific on-the-ground actions, monitoring, and reporting, and set forth a long-term vision to improve and maintain high-quality water resources. As such, a permanent board, the Perry County Community Economic and Environmental Committee (Committee), was established to oversee implementation of the Plan and serve as the clearinghouse for records on activities and events related to water quality. The first step in implementation is the initiation of a comprehensive educational campaign for all residents from elementary students to adults. The Committee developed educational objectives and is expanding educational opportunities that correspond directly to environmental concerns. The Committee prioritized on-the-ground actions to improve water quality, including sinkhole management, solid waste management, stormwater management, and implementation of temporary and permanent best management practices in rural and

urban settings. Methods for monitoring grotto sculpin populations and water quality are being established in cooperation with the MDC and the Missouri Department of Natural Resources.

Since November 2012, some of the actions outlined in the Plan have been implemented. More than 350 tires have been removed from sinkholes in cooperation with the MDC and local volunteers. Participants have registered for educational programs including a teacher's workshop for K–12 teachers called Project Wet, and an Envirothon was held with support from the local Soil and Water Conservation District that focused on education about soils, aquatic habitats, and the grotto sculpin. Upcoming events include County-wide refuse disposal efforts, karst-specific training for pesticide applicators, and a water testing clinic.

We expect this partnership between local residents, City and County governments, and Federal and State agencies will improve water quality in the Perry County Karst and benefit the grotto sculpin in the future. Factors contributing to poor water quality were identified under Factor A as the greatest threat to the species and we anticipate that the voluntary actions taken by local residents will improve water quality and benefit the species. Furthermore, the actions in the Perry County Plan will have conservation benefits beyond those that could be accomplished through the section 7 consultation process alone, because nearly all grotto sculpin habitat occurs on private land and few activities will have a Federal nexus. The Plan provides evidence of past environmental stewardship, education to stakeholders, prioritized future activities to improve water quality and conserve the grotto sculpin and its karst habitat, mechanisms to alleviate threats through on-the-ground activities, an adaptive management approach that will facilitate incorporation of new information, and commitment of financial and staff resources to implement the Plan.

Berome Moore Cave System Management Plan

The Missouri Caves and Karst Conservancy, Inc. (Conservancy) purchased 1 acre of land to form the Lloyd and Ethel Hoff Underground Nature Preserve, which includes the entrance to the Berome Moore Cave System. The Conservancy has agreed, via a Memorandum of Understanding, that the cave and property will be managed by Middle Mississippi Valley Grotto, Inc. (MMV), who have managed the cave since its discovery in 1961. The

MMV will continue to manage Berome Moore Cave in order that it will be available for scientific study and recreation by responsible cavers, while at the same time protecting the cave and its ecosystem for future generations of cavers. MMV will also manage the surface property to enhance the overall natural setting while protecting the subsurface resources. The responsibility for managing the cave system falls with the MMV Berome Board. The Board consists of the Berome Moore Project Director, the MMV Chair, a Property Manager, and a Cave Manager.

The Missouri Department of Conservation

The MDC developed the Perry County Karst Project: Summary and Future Management Implications for the Grotto Sculpin. The plan includes goals to (1) educate and improve Perry County Karst stakeholders' awareness of groundwater movement and sources of inputs in the karst watershed; (2) improve soil stability near streams, sinkholes, and vertical drainpipes by implementing enhanced vegetative buffers; (3) improve water quality throughout the Perry County Karst watershed; and (4) maintain the abundance, diversity, and distribution of aquatic biota at or above current levels while improving the quality of the game fishery in the Perry County karst watershed. The MDC aims achieve these goals through a combination of outreach, workshops, and meetings to increase local awareness of available best management practices that can improve water quality, assistance with implementing best management practices, study water movement and recharge in the karst system, and conduct biological monitoring of the grotto sculpin and other cave biota.

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

Although approximately 160 specimens of the grotto sculpin have been taken for scientific investigations, we do not consider such collection activities to be at a level that poses a threat to the species. We do not have records of any individuals being taken for commercial or recreational purposes.

C. Disease or Predation

Predation by invasive, epigeal fish poses a threat to eggs, young-of-year, and juvenile grotto sculpin. Farm ponds are human-made features, as opposed to natural aquatic habitats, that often are stocked with both native and nonnative fishes for recreational purposes. Fish from farm ponds enter cave systems

through sinkholes when ponds are unexpectedly drained (Burr *et al.* 2001, p. 284) or after high-precipitation events. Predatory fish were documented in all of the caves occupied by the grotto sculpin, and include common carp (*Cyprinus carpio*), fathead minnow (*Pimephales promelas*), yellow bullhead (*Ameiurus natalis*), green sunfish (*Lepomis cyanellus*), bluegill (*Lepomis macrochirus*), and channel catfish (*Ictalurus punctatus*) (Burr *et al.* 2001, p. 284).

The migration and persistence of invasive, epigeal fish species into cave environments poses an ongoing and pervasive threat to the grotto sculpin because of unnatural levels of predation on eggs, young-of-year, and juveniles. Predation beyond what occurs naturally among adult and juvenile grotto sculpin may reduce population levels, potentially to an unsustainable level; however, no monitoring of invasive fish has been conducted to determine what level of effect their presence has on grotto sculpin populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary threats to the grotto sculpin are degradation of aquatic resources from illegal waste disposal in sinkhole dumps, pesticide runoff, chemical leaching, urban development, and sedimentation. Existing Federal, State, and local laws have not been able to prevent impacts to the grotto sculpin and its habitat largely because of noncompliance and inability to fully enforce existing laws.

Federal

The Federal Clean Water Act of 1972 (CWA; 33 U.S.C. 1251 *et seq.*) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the EPA implements pollution control programs such as setting wastewater standards for industry and for all contaminants in surface waters. Under the CWA, it is unlawful to discharge any pollutant from a point source into navigable waters, unless a permit is obtained. EPA's National Pollutant Discharge Elimination System (NPDES) permit program controls discharges. Point sources are discrete conveyances such as pipes or manmade ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.

Based on documented levels of contaminants present in the cave streams of Perry County (Fox *et al.* 2010, pp. 8835–8841), current compliance with and enforcement of the Clean Water Act of 1972 is insufficient to prevent water degradation in grotto sculpin habitat.

Federal control of pesticides is provided under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). All pesticides used in the United States must be registered (licensed) by the EPA. Registration assures that pesticides will be properly labeled and that, if used in accordance with specifications on the label, will not cause unreasonable harm to the environment. By law, use of each registered pesticide must be consistent with use directions contained on the label or labeling. Some commonly used pesticides, such as atrazine, require that the chemical not be applied within 50 ft (15 m) of a groundwater input. Noncompliance with label instructions could result in the pesticide entering aboveground and underground streams and harming aquatic life. Based on documented levels of pesticides present in the cave streams of Perry County (Fox *et al.* 2010, pp. 8835–8841), current compliance with and enforcement of FIFRA is insufficient to prevent water degradation in grotto sculpin habitat.

State

Until its formal description as a distinct species in 2013, the grotto sculpin was not eligible for protection under the Missouri State Endangered Species Law (MO ST 252.240). The State of Missouri can consider adding the grotto sculpin to the State Endangered Species List now that the species designation has been formalized. While the grotto sculpin was a Candidate species, it was recognized by the MDC as a Missouri Species of Conservation Concern. All species in the State of Missouri are protected as biological diversity elements such that no harvest is permitted unless a method of legal harvest is described in the permissive Wildlife Code. No method of legal harvest is permitted for the grotto sculpin.

The Missouri Department of Natural Resources establishes water quality and solid waste standards that are protective of aquatic life. The Missouri Clean Water Law of 1972 (MO ST 644.006–644.141) addresses pollution of the waters of the State to prevent threats to public health and welfare; wildlife, fish, and other aquatic life; and domestic, agricultural, industrial, recreational, and other legitimate uses of water. It is

unlawful for any person: (1) To cause pollution of any waters of the State or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the State; (2) To discharge any water contaminants into any waters of the State that reduce the quality of such waters below the water quality standards established by the commission; or (3) To violate any regulations regarding pretreatment and toxic material control, or to discharge any water contaminants into any waters of the State that exceed effluent regulations or permit provisions as established by the commission or required by any Federal water pollution control act (MO ST 644.051). Based on documented levels of contaminants present in the cave streams of Perry County (Fox *et al.* 2010, pp. 8835–8841), current compliance with and enforcement of the Missouri Clean Water Law of 1972 is insufficient to prevent water degradation in grotto sculpin habitat.

According to the Missouri State Waste Management Law of 1972 (MO ST 260.210), it is illegal to dump waste materials into sinkholes. Regulations under the CWA would apply if a point-source for the pollution could be determined. Discrete pollution events that impact cave systems are problematic even if a point-source can be determined because it can be extremely difficult to assess damages to natural resources such as troglotic biota that live underground. Cave systems are recharged by surface water and groundwater that typically travels several miles before resurfacing from cave openings and spring heads (Vandike 1985, p. 3). Based on the presence of numerous sinkhole dumps in Perry County, current compliance with and enforcement of Missouri State Waste Management Law of 1972 is insufficient to address threats to the grotto sculpin and its habitat.

Once a sinkhole has been modified or improved to function as a vertical drain (it accepts surface or subsurface drainage from agricultural activities), it qualifies as a Class V Injection Well (alternatively known as an “agricultural drainage well”) (EPA 1999, p. 4). By definition, agricultural drainage wells receive fluids such as irrigation tailwaters or return flow, other field drainage (*e.g.*, resulting from precipitation, snowmelt, floodwaters), animal yard runoff, feedlot runoff, or dairy runoff (EPA 1999, p. 4). In addition to threats from permitted injectants, agricultural drainage wells are vulnerable to spills from manure lagoons and direct discharge from septic

tanks, as well as release of agricultural substances, such as motor oil and pesticides (EPA 1999, p. 28). Nitrates, total dissolved solids (TDS; *e.g.*, solid salts, organometallic compounds, and other non-specific inorganic compounds that are dissolved in water), sediment, salts, and metals are the most common inorganic constituent in agricultural drainage well injectates (EPA, p. 12). The Safe Drinking Water Act of 1974 (42 U.S.C. 300f *et seq.*) and later amendments established the Federal Underground Injection Control (UIC) Program. The State of Missouri has obtained primacy from the EPA for the UIC program, and the Class V Injection Well program derives its authorities from Missouri Clean Water Law (MO ST 644) (MDNR 2006, p. 2). Even though Class V injection wells are covered under the Missouri Clean Water Law of 1972, compliance with and enforcement of the existing regulations do not prevent deposition of contaminants documented in occupied grotto sculpin habitats of Perry County.

Agricultural drainage wells in Iowa are present in an agricultural landscape characterized by karst features that include solution channels and sinkholes (EPA 1999, p. 6). Nitrates are derived from oxidized nitrogen compounds that are applied to cropland to add nutrients and are highly mobile in ground water (EPA 1999, p. 12). Data from water sampling in Iowa indicate that nitrate is a primary constituent in ADW injectate and likely exceeds health standards (EPA 1999, p. 13). Water quality sampling of agricultural drainage well injectate conducted in Iowa, Texas, and Idaho showed that other constituents also have exceeded primary or secondary drinking water standards or health advisory levels, and include boron, sulfate, coliforms, pesticides (cyanazine, atrazine, alachlor, aldicarb, carbofuran, 1,2-dichloropropane, and dibromochloropropane), TDSs, and chloride (EPA 1999, pp. 14–20).

Local Ordinances

There are no water quality ordinances in effect in Perry County beyond minimum State standards in the Code of State Regulations (19 CSR 20–3.015) and, therefore, no limitations for onsite septic construction as long as septic systems are built on properties greater than 1.2 ha (3 ac) and the system is at least 3 m (10 ft) from the property line. A more protective ordinance has been adopted in Monroe County, Illinois, where the soils and topography are very similar to Perry County (Monroe County Zoning Code 40–5–3, chapter 40–4–29). The ordinance in Monroe County prohibits placement of any substances

or objects in sinkholes, alteration of sinkholes, and development in sinkholes. The stated purpose of the ordinance is, “to reduce the frequency of structural damage to public and private improvements by sinkhole collapse or subsidence and to protect, preserve and enhance sensitive and valuable potable groundwater resource areas of karst topography, thus protecting the public health, safety and welfare and insuring orderly development within the County.”

Greene County, Missouri, also is in a sinkhole plain and has adopted special regulations relative to construction of onsite septic systems. They require that systems are constructed above the sinkhole flooding area, which is defined as “the area below the elevation of the lowest point on the sinkhole rim or the areas inundated by runoff from a storm with an annual exceedance probability of 1 percent (100-year storm) and a duration of 24 hours (8 inches of rain in Green County)” (Green County 2003, pp. 3–9). Current compliance with and enforcement of minimum standards in the Code of State Regulations (19 CSR 20–3.015) for water quality standards in Missouri are not protective enough to prevent the deposition of silt and contaminants into occupied grotto sculpin habitats, as reported by Gerken and Adams (2007, p. 76) and Fox *et al.* (2010, pp. 8835–8841).

Summary of Factor D

Despite existing regulatory mechanisms that provide some protection for the grotto sculpin and its habitat, a wide array of factors (see Factors A, C, and E) remain threats to the grotto sculpin. Existing Federal and State water quality laws and State waste management law can be applied to protect water quality in surface and cave streams occupied by the grotto sculpin; however current compliance and enforcement of these laws have not been sufficient to prevent continued habitat degradation and mortality events. Although harvest of grotto sculpin is not permitted in the Missouri Wildlife Code, the species has not yet been protected under Missouri Endangered Species Law but is now eligible because it has been formally recognized as a distinct species. The existing regulatory mechanisms could provide protection of water quality in grotto sculpin habitat, which is the most significant threat to the species, and address threats to the species throughout its range if enforcement and compliance were improved.

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

Restricted Range and Isolated Populations

The grotto sculpin has a restricted range that is confined to five cave systems and two short stream reaches in two watersheds. Results of genetic analysis indicate isolation of grotto sculpin populations. Adams *et al.* (2013, p. 488) documented genetic isolation between northern sample locations (Moore Cave, Crevice Cave, Mertz Cave, Blue Spring Branch, and Cinque Hommes Creek) and southern sample locations (Mystery Cave, Running Bull Cave, Rimstone River Cave, and Thunderhole Resurgence). The grotto sculpin’s isolated populations are each susceptible to local extirpation from a single catastrophic event, such as a toxic chemical spill or storm event that destroys its habitat. Local extirpation of one or more of the existing five populations would reduce the ability to recover from the cumulative effects of smaller chronic impacts to the population and habitat such as progressive degradation from water contamination.

Environmental stressors, such as habitat loss and degradation, exacerbate problems associated with the species’ endemism and isolation, increasing the species’ vulnerability to localized or rangewide extinction (Cmokrak and Roff 1999, p. 262; Hedrick and Kalinowski 1999, pp. 142–146). The isolation of populations of the grotto sculpin make it vulnerable to extinction and loss of genetic diversity caused by genetic drift, inbreeding depression, and stochastic events (Willis and Brown 1985, p. 316). Small, isolated populations are more susceptible to genetic drift, possibly leading to fixation where all except one allele is lost, and population bottlenecks leading to inbreeding (Frankham *et al.* 2002, pp. 178–187). Inbreeding depression can result in death, decreased fertility, smaller body size, loss of vigor, reduced fitness, various chromosome abnormalities, and reduced resistance to disease (Hedrick and Kalinowski 1999, pp. 139–142).

Even though some populations fluctuate naturally, small and low-density populations are more likely to fluctuate below a minimum viable population (the minimum or threshold number of individuals needed in a population to persist in a viable state for a given interval) if they are influenced by stressors beyond those under which they have evolved (Shaffer 1981, p. 131; Shaffer and Samson 1985, pp. 148–150; Gilpin and Soule 1986, pp. 25–33). For

example, grotto sculpin in Running Bull Cave exhibit the most distinct morphological adaptations to the cave environment and are the only individuals in the Cinque Hommes Creek drainage to have a rare genetic haplotype (Adams 2005, p. 49). One of the two known mass mortalities caused by a pollution event occurred in Running Bull Cave and temporarily eliminated grotto sculpin from the site. Grotto sculpin eventually recolonized the cave, but recolonization did not necessarily occur through local recruitment, but possibly through immigration by individuals from connected population segments within the same cave system. Unknown subterranean connections via inaccessible and currently unsurveyed portions of some grotto sculpin caves could provide a means of connecting populations between or among caves. For example, Running Bull Cave might serve as a primary site of population connectivity and act as a connecting stream between Mystery and Rimstone River Caves (Day 2008, p. 52).

Even though haplotype diversity post-extirpation was comparable to that previously measured (Day 2008, p. 54), it is possible that previously undocumented haplotypes were lost and will not be recovered. Day (2008, p. 54) notes that extirpation events of longer duration or greater severity could negatively impact overall genetic diversity. Furthermore, this scenario is illustrative of the potential for extirpation of entire populations and the cascading effects on connected populations.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (for example, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other

relevant considerations, such as the effects of interactions of climate with other variables (for example, habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change. As is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an “endangered species” or a “threatened species” under the Act. If a species is listed as an endangered or threatened species, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

The impact of climate change on the grotto sculpin is uncertain. The species is dependent on an adequate water supply and has specific habitat requirements (water depth and connectivity of caves and surface sites); we expect that climate change could significantly alter the quantity and quality of grotto sculpin habitat and thus impact the species in the future. This species relies on surface water for energy input into the cave system, recharge of groundwater, and availability of surface streams. Potential adverse effects from climate change include increased frequency and duration of droughts (Rind *et al.* 1990, p. 9983; Seager *et al.* 2007, pp. 1181–1184; Rahel and Olden 2008, p. 526) and changes in water temperature, which likely serves as a cue for reproduction in grotto sculpin (Adams 2005, pp. 10–11). Climate warming might also decrease groundwater levels (Schindler 2001, p. 22) or significantly reduce annual stream flows (Moore *et al.* 1997, p. 925; Hu *et al.* 2005, p. 9). In the Missouri Ozarks, it is projected that stream basin discharges may be significantly impacted by synergistic effects of changes in land cover and climate change (Hu *et al.* 2005, p. 9), and similar impacts are anticipated in the karst regions of Perry County, Missouri. Grotto sculpin require deep pools in caves, which could decrease in availability under drought conditions. Overall, shallower water or reduced flows could further concentrate contaminants present and lower dissolved oxygen in cave habitats.

Summary of Factor E

The restricted nature and isolation of grotto sculpin populations makes it more vulnerable to decline or loss of populations from stochastic events. Such losses could have detrimental effects to the genetic diversity and long-term genetic viability of the species. The symptom of climate change most likely to have detrimental effects on the grotto sculpin is increased frequency and severity of drought, but the extent and intensity of impacts are known. Because the grotto sculpin is dependent on connectivity among underground aquatic habitats and connectivity between underground and aboveground aquatic habitats, sustained decreases in water levels could cut off migratory routes and make recolonization impossible should a population-limiting situation occur. Low pool levels also could concentrate any chemicals present in the water and magnify the impacts of those contaminants. However, it is the combination of Factor E with other threats to the species (primarily water quality degradation), not Factor E alone, that poses the greatest threat to the grotto sculpin. Therefore, we find that other natural or manmade factors alone do not pose a significant threat to the continued existence of the grotto sculpin now or into the future.

Cumulative Impacts

Cumulative Effects From Factors A Through E

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that potentially impact the grotto sculpin beyond the scope of the combined threats that we have already analyzed. The restricted nature and isolation of grotto sculpin populations, loss of genetic diversity, and effects from climate change could exacerbate other factors negatively affecting the species. These factors are particularly detrimental when combined with other factors, such as habitat and water quality degradation and predation by invasive fish, and have a greater cumulative impact than would any of those factors acting independently. For example, compromised health from poor water quality might increase predation risk or extended periods of drought can reduce connectivity among subpopulations, impeding recolonization following a catastrophic event that extirpates a population.

Summary of Factors

The primary threat to the grotto sculpin is the present or threatened

destruction, modification, or curtailment of its habitat or range. Water contamination from various sources of point and non-point source pollution poses a significant, ongoing threat to the grotto sculpin. Water flow in karst systems occurs by way of surface features, such as sinkholes and losing streams, as well as connectivity to the underlying aquifer. Sinkholes can funnel storm-runoff that carries contaminants directly into cave systems in a short period of time and severely degrades water quality. These factors are ongoing and thus pose current threats to the species.

Determination

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the grotto sculpin. Numerous major threats, acting individually or synergistically, continue today (see Summary of Factors Affecting the Species). The most substantial threats to the species come from the present or threatened destruction, modification, or curtailment of its habitat (Factor A). Although no clear estimates of historical population numbers for the grotto sculpin exist in order to determine whether or not dramatic population declines have occurred in the past, two mass mortalities have been documented since the early 2000s. Both mortality events are thought to have been caused by point-source pollution of surface waters that recharge cave streams occupied by the grotto sculpin.

The known factors negatively affecting the grotto sculpin have continued to impact the species’ habitat since it was elevated to candidate status in 2002 (67 FR 40657; June 13, 2002). All of the recharge areas for known grotto sculpin habitat are considered vulnerable. It is believed that the primary threats to the species are habitat destruction and modification from water quality degradation and siltation. In particular, documentation that a suite of chemicals and other contaminants is continuously entering the groundwater above levels that can be harmful to aquatic life is especially concerning. Potential sources and vehicles for introduction of pollution likely are industrialization, contaminated agricultural runoff, sinkhole dumps, and

vertical drains installed without appropriate best management practices.

A variety of current- and legacy-use pesticides from agricultural runoff and sinkhole leaching, evidence of human waste from ineffective septic systems, and animal waste from livestock operations have been detected in grotto sculpin streams. These not only negatively affect the grotto sculpin directly but also the aquatic ecosystems and aquifer underlying the Perry County sinkhole plain.

Siltation beyond historical levels affects the grotto sculpin in a variety of ways, such as eliminating suitable habitat for all life stages, reducing dissolved oxygen levels, increasing contaminants (that bind to sediments), and reducing prey populations. Predation on eggs, larvae, and juveniles by nonnative epigeal fish can further reduce population numbers and will be a more prominent threat if siltation continues to degrade cave habitats to the point where refugia from predatory fish are no longer available to the grotto sculpin.

The grotto sculpin's endemism and isolated populations make it particularly susceptible to multiple, continuing threats and stochastic events that could cause substantial population declines, loss of genetic diversity, or multiple extirpations, leading ultimately to extinction of the species. Temporary extirpations of two of five known populations have occurred in the recent past. Recolonization after such mortality events is dependent on the presence and accessibility of source populations. Continued threats to the species not only impact individual populations, but also decrease the viability of source populations, and the likelihood that areas where the species has been extirpated will be recolonized. Furthermore, existing regulatory mechanisms provide little direct protection of water quality in grotto sculpin habitat, which is the most significant threat to the species. In addition to the individual threats, primarily those discussed under Factor A, which is sufficient to warrant the species' listing, the cumulative effect of Factors A, C, and E is such that the influence of threats on the grotto sculpin are significant throughout its entire range.

Overall, impacts from increasing threats, operating singly or in combination, are likely to result in the extinction of the species. Because these threats are placing the species in danger of extinction now and not only at some point in the foreseeable future, we determined it is endangered and not threatened. Therefore, on the basis of

the best available scientific and commercial information, we are listing the grotto sculpin as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

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

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

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal

and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (<http://www.fws.gov/endangered>), or from our Columbia Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its

critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Department of Defense, U.S. Fish and Wildlife Service, and U.S. Forest Service; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain

circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

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

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or

survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

References Cited

A complete list of all references cited in this rule is available on the Internet at <http://www.regulations.gov> or upon request from the Field Supervisor, Columbia Missouri Ecological Services Field Office (see **ADDRESSES** section).

Author(s)

The primary author of this document is staff from the Columbia Missouri Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

- 2. Amend § 17.11(h) by adding an entry for “Sculpin, grotto” to the List of Endangered and Threatened Wildlife in alphabetical order under Fishes to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes	*	*	*	*	*		*
Sculpin, grotto	<i>Cottus specus</i>	U.S.A. (MO)	Entire	E	823	17.95(e)	NA
	*	*	*	*	*		*

Dated: September 9, 2013.

Stephen Guertin,

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

[FR Doc. 2013-23185 Filed 9-24-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563-3148-02]

RIN 0648-XC882

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod from catcher vessels using trawl gear to American Fisheries Act trawl catcher/processors and Amendment 80 catcher/processors in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2013 total allowable catch of Pacific cod to be harvested.

DATES: Effective September 24, 2013, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific

Fishery Management Council 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 2013 Pacific cod total allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI is 49,312 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013), and sector reallocations (78 FR 52868, August 27, 2013). The Regional Administrator has determined that catcher vessels using trawl gear will not be able to harvest 2,500 mt of the 2013 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(9). The Regional Administrator has also determined that this unharvested amount is unlikely to be harvested through the hierarchy set forth in § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(A) and § 679.20(a)(7)(iii)(B), NMFS reallocates 500 mt to American Fisheries Act (AFA) trawl catcher/processors and 2,000 mt to Amendment 80 catcher/processors.

The harvest specifications for Pacific cod included in the final 2013 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013, and 78 FR 52868, August 27, 2013) are revised as follows: 6,340 mt for AFA trawl catcher/processors, 34,612 mt for Amendment 80 catcher/processors, and 46,812 mt for trawl catcher vessels. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Pacific cod to Amendment 80 catcher/processors following the procedures set forth in § 679.91(f)(3).

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for catcher vessels using trawl gear to AFA trawl catcher/processors and Amendment 80 catcher/processors. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 18, 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 20, 2013.

Kelly Denit,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013-23326 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 78, No. 186

Wednesday, September 25, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS-FV-13-0038]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Changes to the Membership of the Softwood Lumber Board

AGENCY: Agricultural Marketing Service.
ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes to the membership of the Softwood Lumber Board (Board) established under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). The Board administers the Order with oversight by the U.S. Department of Agriculture (USDA). Under the Order, assessments are collected from U.S. manufacturers (domestic) and importers and used for projects to promote softwood lumber within the United States. This proposal would revise the Board's membership to reflect the diversity of the industry in terms of size of operation; allow companies that operate in multiple geographic regions to seek representation in any region in which they operate (U.S. or import); add flexibility for the Board to nominate eligible persons to fill vacancies that occur during a term; and re-designate the States of Virginia and West Virginia to the U.S. South Region. These changes would help facilitate program operations.

DATES: Comments must be received by October 25, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue

SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; facsimile: (202) 205-2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beaver Creek, Oregon, 97004; telephone: (503) 632-8848; facsimile (503) 632-8852; or electronic mail: Maureen.Pello@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under the Order. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an

order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposal invites comments on changes to the Board's membership provisions under the Order. The Board administers the Order with oversight by USDA. Under the Order, assessments are collected from U.S. manufacturers and importers and used for projects to promote softwood lumber within the United States. This proposal would revise the Board's membership to reflect the diversity of the industry in terms of size of operation; allow companies that operate in multiple regions to seek representation in any region in which they operate (U.S. or import); add flexibility for the Board to nominate eligible persons to fill vacancies that occur during a term; and re-designate the States of Virginia and West Virginia to the U.S. South Region. These changes would help facilitate program operations and were unanimously recommended by the Board in July 2013.

Pursuant to section 1217.40(b), the Board is composed of 18 or 19 members, depending upon whether an additional importer member is appointed to the Board. Twelve members are domestic manufacturers and six members are importers of softwood lumber from Canada. Of the 12 domestic manufacturers, 6 represent the U.S. South, 5 represent the U.S. West and 1 represents the Northeast and Lake States. Of the six Canadian importers, four represent Canada West and two represent Canada East. An additional importer member may be appointed to represent all other importing countries besides Canada. Section 1217.40(c)(2)

provides authority for the Board to recommend changes to its membership and nomination process.

The Board met on May 7 and 8, 2013, and reviewed program operations, including the Board’s structure and nomination process. The Board reviewed these issues further and made the following four recommendations in July 2013.

Board Diversity and Size of Operation

The Board recommended that its regional membership be revised to

reflect the diversity of the industry in terms of size of operation. About 8 percent of the companies covered under the Order account for the top two-thirds of the total annual volume of assessable softwood lumber (both domestic and imports). These companies are considered large by the industry in terms of size of operation. Some of these companies operate in multiple regions and some are both a domestic manufacturer and an importer of softwood lumber. Ninety-two percent of the companies covered under the Order

account for the remaining one-third of the total annual volume of assessable softwood lumber. These are considered small by the industry in terms of size of operation.

The Board wants to ensure that this diversity is reflected within each region. The Board analyzed each region’s volume of assessable softwood lumber in relation to the region’s volume attributed to small and large companies. Table 1 below shows this analysis based on 3-year average data (2010–2012).

TABLE 1—REGIONAL ANALYSIS OF ASSESSABLE SOFTWOOD LUMBER BY SIZE OF OPERATION

Region	Assessable volume (billion board feet)	Large companies	Small companies
		Regional volume (billion board feet)	Regional volume (billion board feet)
U.S. South	10.436	5.951 (57%)	4.485 (43%)
U.S. West	10.548	8.017 (76%)	2.511 (24%)
NE and Lake States	0.749	0.229 (31%)	0.520 (69%)
Canada West	4.983	3.919 (79%)	1.064 (21%)
Canada East	2.379	1.315 (55%)	1.064 (45%)

* These figures are an average of data from 2010–2012. 2012 is actual Board assessment data from its first year of operation. 2010 and 2011 Canadian data is from U.S. Customs and Border Protection. 2010 and 2011 U.S. data is from Forest Economic Advisors.

It is noted that for the U.S. South, while the majority of the volume of assessable softwood lumber is attributed

to large companies, almost 90 percent of the number of companies operating in this region are small. The Board

considered this in its recommended distribution of Board seats as shown in Table 2 below.

TABLE 2—ALLOCATION OF BOARD SEATS BASED ON SIZE OF OPERATION

Size of operation	Number of seats					
	U.S. South	U.S. West	NE and Lake States	Canada east	Canada west	Non-Canadian importer
Large companies	2	4	N/A	1	3	N/A
Small companies	4	1		1	1	
	6	5	1	2	4	1

* The Northeast and Lake States member and non-Canadian importer member could represent companies of any size.

Additionally, if there were no eligible nominees for a large or small seat within a region, that seat could be filled by a nominee representing a company of any size. Should a company’s size change during a member’s term of office, that member could serve for the remainder of the term to which they were appointed. Section 1217.40(b) would be revised accordingly.

Further, section 1217.40(c) requires the Board to periodically review the geographic distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. This section would be revised to require the Board to also periodically review the distribution of

seats based on size of operation and recommend changes as necessary. Section 1217.40(c) would be revised accordingly.

Entities That Operate in Multiple Regions (U.S. and/or Import)

Section 1217.41(b)(3) provides that nominees that are both a domestic manufacturer and importer may seek nomination to the Board as either a domestic manufacturer or an importer, but not both. Nominees who domestically manufacture the majority of their softwood lumber must seek representation as a domestic manufacturer and nominees who import the majority of their softwood lumber must seek representation as an importer. Section 1217.41(b)(4) provides that

domestic manufacturers who manufacture and domestically ship from more than one U.S. region must seek representation in the region of the majority of their softwood lumber. Further, section 1217.41(b)(5) provides that importers who import from more than one Canadian region must seek representation in the region from which they import the majority of their softwood lumber.

As previously mentioned some entities in the softwood lumber industry are both domestic manufacturers and importers and operate in multiple regions under the Order. Industry members would like the flexibility to choose which region they represent and whether they seek a position as a domestic manufacturer or an importer

on the Board. Thus, the Board recommended revising the Order so that entities that are U.S. manufacturers and importers and who may operate in multiple regions have the ability to seek representation in any region in which they operate. This would add flexibility to the nomination process by allowing companies to seek representation in their region of choice. Paragraphs (3), (4) and (5) of section 1217.41(b) would be revised accordingly.

Vacancies That Occur Mid-Term

Section 1217.43(c) currently specifies that if a position becomes vacant, nominations to fill the vacancy be conducted using the nomination process set forth in the Order (section 1217.41(b)) whereby the Board solicits the names of eligible nominees and then conducts regional elections. The process is lengthy and can result in a seat remaining vacant for an extended period of time. Thus, the Board recommended revising the Order to allow the Board the flexibility to nominate eligible persons to fill vacancies that occur during a term. This would facilitate program operations by helping to ensure that vacancies are filled in a timely manner. Section 1217.43(c) would be revised accordingly.

Virginia and West Virginia

Section 1217.40(b)(1)(iii) specifies that the States of Virginia and West Virginia are included as part of the Northeast and Lake States Region under the Order. However, softwood lumber from Virginia and West Virginia is predominately pine, a much different species from the white spruce and red pine in the Northeast and Lake States, respectively. Thus, the Board recommended that the Order be revised to re-designate the States of Virginia and West Virginia as part of the U.S. South. The volume of softwood lumber from Virginia and West Virginia is relatively small (284 million board feet in 2012), so this change would have no impact on the regional distribution of seats on the Board. This change would align Virginia and West Virginia with the region in which they have more in common. Section 1217.40(b)(1)(iii) would be revised accordingly.

This proposal would also make two minor changes to the Order. In paragraph (b) of section 1217.70 on reports, the last sentence would be modified to specify that importers who pay their assessments directly to the Board must submit their report that accompanies the payment of collected assessments within 30 calendar days after the end of the quarter in which the softwood lumber was imported as

opposed to 30 calendar days after importation. This language was inadvertently omitted from the final rule that implemented the Order (76 FR 46185; August 2, 2012) and would bring the Order in line with current industry practices. This proposal would also change the OMB control number in section 1217.108 from 0581-NEW to 0581-0264, the control number assigned by the OMB.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than \$7.0 million.

According to the Board, it is estimated that there are currently about 446 domestic manufacturers of softwood lumber in the United States. This number represents separate business entities; one business entity may include multiple sawmills. Using an average price of \$322 per thousand board feet,¹ a domestic manufacturer who ships less than about 25 million board feet per year would be considered a small entity. Using 2012 data, it is estimated that about 270 domestic manufacturers, or about 60 percent,² ship less than 25 million board feet annually.

Likewise, based on data from U.S. Customs and Border Protection (Customs) and the Board, it is estimated there are currently about 767 importers of softwood lumber. Using 2012 Customs data, about 699 importers, or about 91 percent, import less than \$7.0 million worth of softwood lumber annually. Thus, for purposes of the

RFA, the majority of domestic manufacturers and importers of softwood lumber would be considered small entities.

Regarding value of the commodity, with domestic production averaging about 28.5 billion board feet in 2012, and using an average price of \$322 per thousand board feet, the average annual domestic value for softwood lumber is about \$9.2 billion. According to Customs data, the average annual value for softwood lumber imports for 2012 is about \$3.5 billion.

This proposal invites comments on four changes to the Order regarding the Board's membership. Paragraphs (1) and (2) of section 1217.40(b) would be revised to reflect the diversity of the industry in terms of size of operation; paragraph 1217.40(c) would be revised to require the Board to periodically review this distribution. Paragraphs (3), (4) and (5) of section 1217.41(b) would be revised to allow companies that operate in multiple regions to seek representation in any region in which they operate. Section 1217.43(c) would be revised to add flexibility for the Board to nominate eligible persons to fill vacancies that occur during a term. Section 1217.40(b)(1)(iii) would be revised to re-designate the States of Virginia and West Virginia to the U.S. South Region. These changes were unanimously recommended by the Board and are authorized under section 1217.40(c)(2) of the Order and section 515(b)(3) of the 1996 Act.

Regarding the economic impact of this proposed rule on affected entities, these changes are administrative in nature and would have no economic impact on entities covered under the program. These changes would help maintain the Board's balance in terms of size of operation by geographic region; add flexibility so that multi-region companies could choose which region they represent on the Board; help ensure that mid-term vacancies are filled in a timely manner; and better align the States of Virginia and West Virginia.

Regarding alternatives, the Board explored various options regarding the diversity of size of operation. The Board considered establishing a separate region for multi-region companies and companies that are both a domestic manufacturer and an importer. The Board also considered establishing some "at large" seats for multi-region companies. The Board considered weighting an entity's vote in a regional election by volume. The Board also considered maintaining the status quo and not changing the Order in this regard. After much deliberation, the Board opted to recommend allocating

¹ Price data was obtained from Random Lengths Publications, Inc., and is a framing composite price that is designed as a broad measure of price movement in the lumber market (www.randomlengths.com).

² Percentages were obtained from the American Lumber Standard Committee, Inc. (ALSC). The ALSC administers an accreditation program for the grade marking of lumber produced under the American Softwood Lumber Standard (Voluntary Product Standard 20).

regional seats based on an analysis of the volume of softwood lumber within each region and the volume of assessable softwood lumber covered under the Order.

The Board considered maintaining the status quo regarding multi-region companies who may also be a domestic manufacturer and importer, filling mid-term vacancies and the regional designation for the States of Virginia and West Virginia. The Board ultimately recommended modifications to these Order provisions.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581-0264. This proposed rule would impose no additional reporting and recordkeeping burden on domestic manufacturer and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, these actions were discussed by the Board at meetings on May 7 and 8, 2013. The Board's Executive Committee discussed these issues on January 7, June 3 and 10, and July 1, 2013. All of the Board's meetings, including meetings held via teleconference, are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA analysis regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this action needs to be in place no later than February 2014 to allow sufficient time for the election process and appointments for the term

of office beginning January 1, 2015. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1217 is proposed to be amended as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

■ 2. Amend § 1217.40 by:

- a. Revising paragraph (a);
- b. Revising paragraphs (b)(1), (b)2) introductory text, (b)(2)(i), and (b)(2)(ii);
- c. Revising the introductory text to paragraph (c) and paragraphs (c)(2) and (c)(3)

The changes to read as follows:

§ 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and provisions of this Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) of this section. For purposes of this section, large means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and small means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small seat within a region, that seat may be filled by a nominee representing an eligible manufacturer

for the U.S. market of any size. Should the size of a manufacturer for the U.S. market change during a member's term of office, that member could serve for the remainder of the term.

(b) * * *

(1) *Domestic manufacturers.* Twelve members shall be domestic manufacturers from the following three regions:

(i) Six members shall be from the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. Of these six members, two must be large and four must be small;

(ii) Five members shall be from the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Of these five members, four must be large and one must be small; and

(iii) One member shall be from the Northeast and Lake States Region, which consists of the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin and all other parts of the United States not listed in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section.

(2) *Importers.* Six members shall be importers who represent the following regions:

(i) Four members shall import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta. Of these four members, three must be large and one must be small; and

(ii) Two members shall import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States. Of these two members, one must be large and one must be small.

(iii) * * *

(c) In each five-year period, but not more frequently than once in each three-year period, the Board shall:

(1) * * *

(2) Review, based on a three-year average, the distribution of the size of operations within each region; and

(3) If warranted, recommend to the Secretary the reapportionment of the

Board membership to reflect changes in the geographical distribution of the volume of softwood lumber manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. The destination of volumes between regions and the distribution of the size of operations within regions shall also be considered. The number of Board members may also be changed. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

■ 3. Amend § 1217.41 by

■ a. Revising the introductory text to paragraph (b);

■ b. Revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5).

The changes to read as follows:

§ 1217.41 Nominations and appointments.

(a) * * *

(b) Subsequent nominations shall be conducted as follows:

(1) The Board shall conduct outreach to all segments of the softwood lumber industry. Softwood lumber domestic manufacturers and importers may submit nominations to the Board. Subsequent nominees must domestically manufacture and/or import 15 million board feet or more of softwood lumber per fiscal year;

(2) Domestic manufacturers and importer nominees may provide the Board a short background statement outlining their qualifications to serve on the Board;

(3) Nominees that are both a domestic manufacturer and an importer may seek nomination to the Board and vote in the nomination process as either a domestic manufacturer or an importer, but not both. Such nominees must domestically manufacture and import 15 million board feet or more of softwood lumber per fiscal year;

(4) The names of domestic manufacturer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to domestic manufacturers in each respective region for a vote. Domestic manufacturers who manufacture softwood lumber in more than one region may seek nomination and vote in one region of their choice. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary;

(5) The names of importer nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to importers

in each respective region for a vote. Importers who import softwood lumber from more than one region may seek nomination and vote in one region of their choice. The votes shall be tabulated for each region with the nominee receiving the highest number of votes at the top of the list in descending order by vote. The top two candidates for each position shall be submitted to the Secretary.

* * * * *

■ 4. Amend § 1217.43 by revising paragraph (c) to read as follows:

§ 1217.43 Removal and vacancies.

(a) * * *

(b) * * *

(c) If a position becomes vacant, nominations to fill the vacancy may be conducted using the nominations process set forth in § 1217.41(b) or the Board may nominate eligible persons. A vacancy will not be required to be filled if the unexpired term is less than six months.

■ 5. Amend § 1217.70 by revising paragraph (b) to read as follows:

§ 1217.70 Reports.

* * * * *

(b) For domestic manufacturers, such information shall accompany the collected payment of assessments on a quarterly basis specified in § 1217.52. For importers who pay their assessments directly to the Board, such information shall accompany the payment of collected assessments within 30 calendar days after the end of the quarter in which the softwood lumber was imported.

■ 6. Section 1217.108 is revised to read as follows:

§ 1217.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 4 U.S.C. is OMB control number 0581-0264.

Dated: September 17, 2013.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2013-22968 Filed 9-24-13; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0793; Directorate Identifier 2012-NM-138-AD]

RIN 2120-AA64

Airworthiness Directives; BAE SYSTEMS (OPERATIONS) LIMITED Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 series airplanes and Model Avro 146-RJ series airplanes. This proposed AD was prompted by reports of excess solder deposited during overhaul on the frangible plug of a fire extinguisher, which prevented the release of the extinguishant. This proposed AD would require a one-time inspection of certain engine and auxiliary power unit (APU) fire extinguishers to determine if the fire extinguishers are affected by excessive solder and corrective actions if necessary. We are proposing this AD to prevent the failure of a fire extinguisher to discharge, which reduces the ability of the fire protection system to extinguish fires in the engine or APU fire zones, possibly resulting in damage to the airplane and injury to the passengers.

DATES: We must receive comments on this proposed AD by November 12, 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 BAE SYSTEMS (OPERATIONS) LIMITED service information identified in this proposed AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department,

Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email RAPublications@baesystems.com; Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>. For Kidde Gravier service information identified in this proposed AD, contact Kidde Gravier Limited, Methisen Way, Colnbrook, Slough, Berkshire, SL3 0HB, United Kingdom; telephone +44 (0) 1753 683245; fax +44 (0) 1753 685040. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1175; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0793; Directorate Identifier 2012-NM-138-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0126R1, September 10, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A fire handle on a BAe 146 aeroplane was operated on the ground as a precautionary measure after the throttle cable on the affected engine failed, due to corrosion. The extinguisher failed to discharge.

Investigation results revealed that excess solder, which had been deposited during overhaul on the frangible plug of the extinguisher, prevented the release of the extinguishant. Prompted by this report, Kidde Gravier, the fire extinguisher manufacturer, identified four further extinguishers of similar design that had the same issue.

This condition, if not detected and corrected, could result in the failure of a fire bottle to discharge, which reduces the ability of the fire protection system to extinguish fires in the engine or Auxiliary Power Unit (APU) fire zones, possibly resulting in damage to the aeroplane and injury to the occupants.

For the reasons described above, EASA issued AD 2012-0126 to require a one-time inspection of the affected Part Number (P/N) 57333 engine and APU fire extinguishers. In addition, this [EASA] AD prohibited installation of a fire extinguisher, unless it has passed the inspection as required by [EASA] AD 2012-0126.

Revision 1 of this [EASA] AD is issued to clarify that new extinguishers P/N 57333 may be fitted with no additional inspection required by this [EASA] AD.

Required actions include installing a new unit or overhauling the unit if any solder is found during the inspection. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE SYSTEMS (OPERATIONS) LIMITED has issued Service Bulletin 26-078, dated September 21, 2011. Kidde Gravier Limited has issued Service Bulletin 26-080, Revision 1, dated July 27, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified

of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

Although the MCAI does not specify a corrective action if any solder is found, this proposed AD would require an overhaul of affected fire extinguishers or installation of new fire extinguishers, as specified in Kidde Gravier Service Bulletin 26-080, Revision 1, dated July 27, 2011.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$85.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE SYSTEMS (OPERATIONS) LIMITED:
Docket No. FAA-2013-0793; Directorate Identifier 2012-NM-138-AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146-100A, -200A, and -300A airplanes; and Model Avro 146-RJ70A, 146-RJ85A, and 146-RJ100A airplanes; certificated in any category; all models, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by reports of excess solder deposited during overhaul on the frangible plug of the extinguisher, which prevented the release of the extinguishant. We are issuing this AD to prevent the failure of a fire extinguisher to discharge, which reduces the ability of the fire protection system to extinguish fires in the engine or

APU fire zones, possibly resulting in damage to the airplane and injury to the passengers.

(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 and Corrective Action

For airplanes equipped with fire extinguishers manufactured by Kidde Graviner Limited having part number (P/N) 57333 (all dash numbers): Within 12 months after the effective date of this AD, do an x-ray inspection to determine if there is solder between the operating head and container of the fire extinguishers in the engine and auxiliary power unit, in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Service Bulletin 26-078, dated September 21, 2011; or Kidde Graviner Service Bulletin 26-080, Revision 1, dated July 27, 2011; as applicable.

(1) If any solder is found, before further flight, do the action specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of Kidde Graviner Service Bulletin 26-080, Revision 1, dated July 27, 2011.

(i) Overhaul the fire extinguisher and install. An overhaul includes the replacement of the operating head. Replacement of the pressure relief plug assembly only is not considered an overhaul.

(ii) Install a new fire extinguisher.

(2) If no solder is found, no further action is required by this paragraph.

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install a Kidde Graviner Limited fire extinguisher having P/N 57333 (all dash numbers), on any airplane, unless the fire extinguisher is new, or it has been determined that there is no solder between the operating head and container of the fire extinguishers as required by paragraph (g) of this AD, or has been overhauled in accordance with the Accomplishment Instructions of Kidde Graviner Service Bulletin 26-080, Revision 1, dated July 27, 2011.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1175; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal

inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012-0126R1, dated September 10, 2012, for related information, which can be found in the AD docket on the Internet at <http://www.regulations.gov>.

(2) For BAE SYSTEMS (OPERATIONS) LIMITED service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email RApublications@baesystems.com; Internet <http://www.baesystems.com/Businesses/RegionalAircraft/index.htm>. For Kidde Graviner service information identified in this AD, contact Kidde Graviner Limited, Methisen Way, Colnbrook, Slough, Berkshire, SL3 0HB, United Kingdom; telephone +44 (0) 1753 683245; fax +44 (0) 1753 685040. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-23276 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0790; Directorate Identifier 2013-NM-061-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 89-12-10, which applies to certain The Boeing Company Model 747 series airplanes.

AD 89-12-10 currently requires replacement of certain underwing fuel tank access doors with stronger, fire-resistant doors. Since we issued AD 89-12-10, we have received reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. Stencils are required to indicate that the door is impact-resistant and to indicate the correct location for installation of the impact-resistant door. This proposed AD would require an inspection of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations, and replacement of any door with an impact-resistant access door if necessary. This proposed AD would also require an inspection for the presence of stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. This proposed AD would also require revising the maintenance program to incorporate changes to the airworthiness limitations section. This proposed AD would also add airplanes to the applicability. We are proposing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6438; fax: 425-917-6590; email: suzanne.lucier@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0790; Directorate Identifier 2013-NM-061-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On May 22, 1989, we issued AD 89-12-10, Amendment 39-6230 (54 FR 23643, June 2, 1989) ("AD 89-12-10"), for certain The Boeing Company Model 747-100, 747-200, 747-300, and 747-SP series airplanes. AD 89-12-10 requires replacement of certain underwing fuel tank access doors with stronger, fire-resistant doors. AD 89-12-10 resulted from several incidents of door penetration by tire and engine debris, which resulted in spillage of significant quantities of fuel. We issued

AD 89-12-10 to prevent a fire in the wing fuel tank.

Actions Since AD 89-12-10 Was Issued

Since we issued AD 89-12-10, additional access doors, that may be installed on additional airplanes that were not identified in AD 89-12-10, have been identified that may be subject to the unsafe condition. Certain doors are addressed in other service bulletins. Additionally, due to repainting of the lower wing skin, stencils that identify the access door may no longer be in place to provide a visual confirmation that the correct door is installed.

Relevant Service Information

We reviewed the following service information. For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for Docket No. FAA-2013-0790.

- Boeing Service Bulletin 747-28-2315, dated January 11, 2012.
- CDCCL Task 57-AWL-01, "Impact-Resistant Fuel Tank Access Doors," of Sub-section B, Airworthiness Limitations (AWLs)—Fuel Systems, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) of Boeing 747-400 Maintenance Planning Data (MPD) Document D621U400, Revision August 2012.
- CDCCL Task 57-AWL-01, "Impact-Resistant Fuel Tank Access Doors," of Sub-section C, Airworthiness Limitations—Fuel Systems, of the Boeing 747-100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) Document D6-13747-CMR, Revision August 2012.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition identified previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would retain none of the requirements of AD 89-12-10. Since that AD was issued, the FAA issued section 121.316 of the Federal Aviation Regulations (14 CFR 121.316) requiring that each turbine-powered transport category airplane meet the requirements of section 25.963(e) of the Federal Aviation Regulations (14 CFR 25.963(e)). Section 25.963(e) outlines the certification requirements for fuel tank access covers on turbine powered transport category airplanes.

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD would add Models 747-400, 747-400D, 747-400F, and 747SR series airplanes to the applicability, and clarify the applicability of AD 89-12-10, Amendment 39-6230 (54 FR 23643, June 2, 1989) to identify models listed in the current type certification data sheets (TCDS).

This proposed AD would also require inspecting fuel tank access doors to determine that impact-resistant access doors are installed in the correct locations and replacing any door with an impact-resistant access door if necessary; inspecting application of stencils and index markers of impact-

resistant access doors and application of new stencils or index markers if necessary; and revising the maintenance program.

This proposed AD requires revisions to certain operator maintenance documents to include a new CDCCL. Compliance with CDCCLs is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator might not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to the procedures specified in paragraph (j) of

this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

After accomplishment of the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

Costs of Compliance

We estimate that this proposed AD affects 189 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 13 work-hours × \$85 per hour = \$1,105.	\$0	Up to \$1,105	Up to \$208,845.
Maintenance program revision	1 work-hour × \$85 per hour = \$85.	0	85	16,065.

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement per door	3 work-hours × \$85 per hour = \$255	\$8,000	\$8,255
Stencil and index marker (14 doors)	17 work-hours × \$85 per hour = \$1,445	0	1,445

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 89–12–10, Amendment 39–6230 (54 FR 23643, June 2, 1989), and adding the following new AD:

The Boeing Company: Docket No. FAA–2013–0790; Directorate Identifier 2013–NM–061–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 12, 2013.

(b) Affected ADs

This AD supersedes AD 89–12–10, Amendment 39–6230 (54 FR 23643, June 2, 1989).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; as identified in Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

(f) Compliance

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

(g) Inspection and Corrective Action

Within 72 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(1) Do either a general visual inspection or ultrasonic non-destructive test of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations. If any standard access door is found, before further flight, replace with an impact-resistant access door, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(2) Do a general visual inspection of the left- and right-hand wing fuel tank impact resistant access doors to verify stencils and index markers are applied. If a stencil or index marker is missing, before further flight, apply a stencil or index marker, as applicable, in accordance with the

Accomplishment Instructions of Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(h) Maintenance Program Revisions

Within 60 days after the effective date of this AD do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Revise the maintenance program to incorporate CDCCL Task 57–AWL–01, “Impact-Resistant Fuel Tank Access Doors,” of Sub-section B, Airworthiness Limitations (AWLs)—Fuel Systems, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) of Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400, Revision August 2012.

(2) Revise the maintenance program to incorporate CDCCL Task 57–AWL–01, “Impact-Resistant Fuel Tank Access Doors,” of Sub-section C, Airworthiness Limitations—Fuel Systems, of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) Document D6–13747–CMR, Revision August 2012.

(i) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind

Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: suzanne.lucier@faa.gov.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23271 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2013–0798; Directorate Identifier 2013–NM–087–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. This proposed AD was prompted by multiple reports of erratic electrical status indications on the push button annunciators and the engine instrument and crew alerting system. Certain of those reported incidents resulted in the airplane experiencing a momentary loss of electrical power and loss of flight displays. This proposed AD would require modification of the direct current power centers. We are proposing this AD to prevent loss of electrical power, which could result in the loss of flight displays and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the 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 Service Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7301; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2013-0798; Directorate Identifier 2013-NM-087-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2013-05, dated February 22, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

There have been multiple in-service reports of erratic electrical status indications on the Push Button Annunciators (PBA) and the Engine Instrument & Crew Alerting System (EICAS) while on-ground and during flight. Three of those reported incidents resulted in the aeroplane experiencing momentary loss of electrical power and loss of flight displays.

The investigation revealed that improper insertion of a Printed Circuit Board (PCB) in a Direct Current Power Center (DCPC) may lead to erroneous electrical status indications on the PBAs and EICAS. The erroneous indications could mislead the pilots into turning off active generators and leading to partial or complete loss of electrical power. Loss of electrical power could result in the loss of flight displays and reduced controllability of the aeroplane.

Further investigation determined that the design of the existing DCPC covers does not ensure that the PCBs will remain inserted into the motherboard of the DCPC.

This [TCCA] AD mandates the modification of each DCPC to ensure that properly closed covers will retain the PCBs within the motherboards.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier, Inc. has issued Bombardier Service Bulletin 100-24-23, dated November 26, 2012.

Zodiac Services has issued the following service bulletins.

- Zodiac Services Service Bulletin 320GC03Y-24-012, Revision 3, dated December 15, 2012.

- Zodiac Services Service Bulletin 970GC02Y-24-013, Revision 3, dated December 15, 2012.

- Zodiac Services Service Bulletin 975GC02Y-24-013, Revision 3, dated December 15, 2012.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA’s Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 92 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	7 work-hours × \$85 per hour = \$595 per modification.	\$1,568	\$2,163 per modification	\$198,996 per inspection cycle.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a

result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII,

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2013–0798; Directorate Identifier 2013–NM–087–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, serial numbers 20003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by multiple reports of erratic electrical status indications on the push button annunciators and the engine instrument and crew alerting system. Certain of those reported incidents resulted in the airplane experiencing a momentary loss of electrical power and loss of flight displays. We are issuing this AD to prevent loss of electrical power, which could result in the loss of flight displays and reduced controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Direct Current Power Centers (DCPC) Modification

For airplanes having serial numbers 20003 through 20405 inclusive: Within 800 flight hours after the effective date of this AD or within 24 months after the effective date of this AD, whichever occurs first, modify the left-hand DCPC, right-hand DCPC, and auxiliary DCPC, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–24–23, dated November 26, 2012.

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install a DCPC having a part number specified in paragraph (h)(1) through (h)(9) of this AD on any airplane, unless the DCPC serial number has a suffix “R” beside the serial number.

- (1) 970GC02Y04
- (2) 970GC02Y05
- (3) 970GC02Y06
- (4) 975GC02Y04
- (5) 975GC02Y05
- (6) 975GC02Y06
- (7) 320GC03Y04
- (8) 320GC03Y05
- (9) 320GC03Y06

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District

Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–05, dated February 22, 2012, for related information, which can be found in the AD docket on the Internet at <http://www.regulations.gov>.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 17, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23335 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0799; Directorate Identifier 2012–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain ATR–GIE Avions de Transport Régional

Model ATR42 and Model ATR72 airplanes. This proposed AD was prompted by reports of defective sealing between the nacelle lower fairing and the underwing box. This proposed AD would require a one-time general visual inspection for damaged (worn, torn, or abraded) or missing seals between the nacelle lower fairing and the underwing box of both the left-hand and right-hand engine nacelles, and replacement of the seal and/or shims if necessary. We are proposing this AD to prevent the decrease of the fire extinguishing agent efficiency, which could delay fire extinction and allow fire propagation out of the nacelle fire protected area, resulting in damage to the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact ATR-GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email continued.airworthiness@atr.fr; Internet <http://www.aerochain.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this proposed AD, the MCAI, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt. **FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-227-1137; fax: 425-227-1149; email: tom.rodriguez@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0799; Directorate Identifier 2012-NM-153-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0160, dated August 24, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Some cases of defective sealing have been reported on in-service aeroplanes on Left-Hand (LH) and Right-Hand (RH), between the nacelle lower fairing and the underwing box.

Investigation results have shown that this issue was due to either damaged or missing seal and/or incorrect adjustment of the nacelle lower fairing.

This condition, if not detected and corrected, may decrease the extinguishing agent efficiency, delay the fire extinction and allow fire propagation out of the nacelle fire protected area, possibly resulting in damage to the aeroplane.

For the reasons described above, this [EASA] AD requires a one-time [general visual] inspection of the affected area [between the nacelle lower fairing and the underbox wing for damaged (worn, torn, or abraded) or missing seals] and, depending on findings, accomplishment of applicable corrective actions to restore the area integrity.

Corrective actions include replacing the seal and/or shims. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

ATR-GIE Avions de Transport Régional has issued Service Bulletins ATR42-54-0029 and ATR72-54-1023, both dated July 18, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

The MCAI and service bulletins refer only to an inspection of the gaps and seal conditions between the nacelle lower fairing and the underwing box. This AD requires a general visual inspection for damaged or missing seals between the nacelle lower fairing and the underwing box.

Costs of Compliance

We estimate that this proposed AD affects 42 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × \$85 per hour = \$340	\$0	\$340	\$14,280

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	36 work-hours × \$85 per hour = \$3,060	\$341	\$3,401

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120-0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES-200.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a

substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—GIE Avions de Transport Régional:
Docket No. FAA-2013-0799; Directorate Identifier 2012-NM-153-AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraph (c)(1) and (c)(2) of this AD.

(1) ATR—GIE Avions de Transport Régional Model ATR42-200, -300, -320, and -500 airplanes, certificated in any category, manufacturer serial number 003 through 623 inclusive.

(2) ATR—GIE Avions de Transport Régional Model ATR72-101, -201, -102, -202, -211, -212, and -212A airplanes, certificated in any category, manufacturer serial number 108 through 710 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of defective sealing between the nacelle lower fairing and the underwing box. We are issuing this AD to prevent the decrease of the fire extinguishing agent efficiency, which could delay fire extinction and allow fire propagation out of the nacelle fire protected area, resulting in damage to the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection and Corrective Actions

Within 5,000 flight hours after the effective date of this AD: Do a one-time general visual inspection for damaged (worn, torn, or abraded) and missing shims and seals, between the nacelle lower fairing and the underwing box of both the left-hand and right-hand engine nacelles, in accordance with the Accomplishment Instructions of Avions de Transport Régional Service Bulletin ATR42-54-0029; or ATR72-54-1023, both dated July 18, 2012; as applicable. If any seal or shim is damaged or missing, before further flight, replace, as applicable, in accordance with the Accomplishment Instructions of Avions de Transport Régional Service Bulletin ATR42-54-0029; or ATR72-54-1023, both dated July 18, 2012; as applicable.

(h) Reporting

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit a report using the applicable Accomplishment Report of Avions de Transport Régional Service Bulletin ATR42-54-0029; or ATR72-54-1023, both dated July 18, 2012; to ATR Engineering, Service Bulletin Group, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; phone: +33 (0)5 62 21 62 21; fax: +33 (0)5 62 21 69 41; email: techdesk@atr.fr.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-227-1137; fax: 425-227-1149; email: tom.rodriguez@faa.gov. Information may be emailed to: 9-ANM-11-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012-0160, dated August 24, 2012, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov>.

(2) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email continued.airworthiness@atr.fr; Internet <http://www.aerochain.com>. You may review copies of this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on September 17, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-23315 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0797; Directorate Identifier 2013-NM-007-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767-300 and 767-300F series airplanes. This proposed AD was prompted by reports of malfunctions in the flight deck display units resulting in blanking, blurring, or loss of color on the display. This proposed AD would require modification and installation of components in the main equipment center. For certain other airplanes this proposed AD would require modification, replacement, and installation of flight deck air relief system (FDARS) components. We are proposing this AD to prevent malfunctions of the flight deck display units, which could affect the ability of the flightcrew to read the displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flightcrew to maintain control of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- *Fax*: 202-493-2251.

- *Mail*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Boeing service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Controls Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: 425-917-6596; fax: 425-917-6590; email: francis.smith@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2013-0797; Directorate Identifier 2013-NM-007-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of malfunctions in flight compartment display units on Model 767-300F airplanes. Operators of Model 767-300F airplanes reported flight deck display unit malfunctions including blanking, blurring, or loss of color caused by moisture or condensation being collected inside the display units during operation in hot and humid environments. The reports range from a malfunction in a single display unit to malfunctions in multiple display units. Boeing is aware of the likely causes of display unit malfunctions related to moisture or condensation ingress. The most frequent instance was display units being cold soaked by the air delivered from the air conditioning packs by the electronic cooling system through the 3-way valve in hot and humid conditions. Malfunctions of the flight deck display units, if not corrected, could affect the ability of the flightcrew to read the displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flightcrew to maintain control of the airplane.

Model 767-300 airplanes have an electronic cooling system design similar to the electronic cooling system on the Model 767-300F airplane; therefore,

Model 767-300 airplanes might be subject to the unsafe condition revealed on Model 767-300F airplanes.

Relevant Service Information

We reviewed the following service information.

- Boeing Service Bulletin 767-21-0240, Revision 1, dated November 12, 2009.
- Boeing Service Bulletin 767-21-0244, Revision 1, dated March 8, 2010.
- Boeing Service Bulletin 767-21-0245, Revision 1, dated September 30, 2010.
- Boeing Alert Service Bulletin 767-21A0247, dated October 10, 2011.
- Boeing Alert Service Bulletin 767-21A0253, dated October 12, 2012.

For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for Docket No. FAA-2013-0797.

Concurrent Service Information

Boeing Service Bulletin 767-21-0240, Revision 1, dated November 12, 2009; and Boeing Service Bulletin 767-21-0244, Revision 1, dated March 8, 2010 (both for Model 767-300 series airplanes); specify prior or concurrent accomplishment of Boeing Service Bulletin 767-31-0073, dated October 12, 1995 (for certain Model 767-300 series airplanes).

Boeing Service Bulletin 767-21-0245, Revision 1, dated September 30, 2010 (for Model 767-300F series airplanes), specifies that if the 3-way valve control logic change in Boeing Service Bulletin 767-21-0235, dated July 29, 2011, is done in concurrently with Boeing Service Bulletin 767-21-0245, Revision 1, dated September 30, 2010, operators

only need to do the functional test in the Accomplishment Instructions of Boeing Service Bulletin 767-21-0245, Revision 1, dated September 30, 2010.

Boeing Alert Service Bulletin 767-21A0247, dated October 10, 2011 (for Model 767-300F series airplanes), specifies prior or concurrent accomplishment of Boeing Service Bulletin 767-21-0235, dated October 8, 2009; or Revision 1, dated July 29, 2011 (for certain Model 767-300F series airplanes).

For information on the procedures, see this service information at <http://www.regulations.gov> by searching for Docket No. FAA-2013-0797.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously, except where Boeing Service Bulletin 767-21-0240, Revision 1, dated November 12, 2009; and Boeing Service Bulletin 767-21-0244, Revision 1, dated March 8, 2010; specify installing carpet in the flight deck, this proposed AD would not specifically require that action because it is not critical to address the unsafe condition.

Costs of Compliance

We estimate that this proposed AD affects 43 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Pressure switch installation, relay replacement, wire routing (Boeing Alert Service Bulletin 767-21A0247, dated October 10, 2011).	16 work-hours × \$85 per hour = \$1,360.	\$6,979	\$8,339	\$183,458 (22 airplanes)
Carpet, muffler, and drain tube installation, relay removal and installation, wire bundle changes (Boeing Service Bulletin 767-21-0240, dated November 12, 2009; and Boeing Service Bulletin 767-21-0244, Revision 1, dated March 8, 2010).	37 work-hours × \$85 per hour = \$3,145.	0	3,145	50,320 (16 airplanes)
Wire bundle and relay changes, install 2 diodes (Boeing Service Bulletin 767-21-0245, Revision 1, dated September 30, 2010).	14 work-hours × \$85 per hour = \$1,190.	1,148	2,338	11,690 (5 airplanes)
Replace duct, install additional duct, valve, altitude switch, and pitot tube (Boeing Alert Service Bulletin 767-21A0253, dated October 12, 2012).	76 work-hours × \$85 per hour = \$6,460.	55,663	N/A	N/A

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby

reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a

result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0797; Directorate Identifier 2013–NM–007–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–300 and 767–300F series airplanes, certificated in any category; as identified in the service information specified in paragraphs (c)(1) through (c)(5) of this AD.

(1) Boeing Service Bulletin 767–21–0240, Revision 1, dated November 12, 2009.

(2) Boeing Service Bulletin 767–21–0244, Revision 1, dated March 8, 2010.

(3) Boeing Service Bulletin 767–21–0245, Revision 1, dated September 30, 2010.

(4) Boeing Alert Service Bulletin 767–21A0247, dated October 10, 2011.

(5) Boeing Alert Service Bulletin 767–21A0253, dated October 12, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2158, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by reports of malfunctions in the flight deck display units resulting in blanking, blurring, or loss of color on the display. We are issuing this AD to prevent malfunctions of the flight deck display units, which could affect the ability of the flightcrew to read the displays for airplane attitude, altitude, or airspeed, and consequently reduce the ability of the flightcrew to maintain control of the airplane.

(f) Compliance

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

(g) Modification, Replacement, and Installation of Flight Deck Air Relief System (FDARS) Components

For Model 767–300F series airplanes as identified in Boeing Alert Service Bulletin 767–21A0253, dated October 12, 2012: Within 72 months after the effective date of this AD, in the main equipment center and the area under the left and right sides of the flight deck door, replace the existing duct with a new duct, install new FDARS components (including mounting brackets, ducts, orifice, outlet valve, and screen), modify wiring, modify the relay installation in panel P36, and install a new altitude switch and pitot tube, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–21A0253, dated October 12, 2012.

(h) Modification and Installation of Components in the Main Equipment Center

(1) For Model 767–300F series airplanes as identified in Boeing Alert Service Bulletin 767–21A0247, dated October 10, 2011: Within 72 months after the effective date of this AD, in the main equipment center, install a new bracket on the E8 Engine Indication and Crew Alerting System (EICAS) rack at station 266.5, install a new pressure switch to the bracket at the E8 EICAS rack, make changes to wire bundles W176, W596, W1114, W1702, W2000, replace relay K10355 with a new relay K10718, and flush the pitot static system, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–21A0247, dated October 10, 2011.

(2) For Model 767–300F series airplanes as identified in Boeing Service Bulletin 767–21–0245, Revision 1, dated September 30, 2012: Within 72 months after the effective date of this AD, in the main equipment center, replace relay K10355 with a new relay K10718, add two diodes in the E8 EICAS rack, and make changes to wire bundles W0176, W596, W1702, W2000, and W2006, in accordance with the Accomplishment Instruction of Boeing Service Bulletin 767–21–0245, Revision 1, dated September 30, 2012, except as provided by paragraph (i) of this AD.

(3) For Model 767–300 series airplanes as identified in Boeing Service Bulletin 767–21–0240, Revision 1, dated November 12, 2009; and Boeing Service Bulletin 767–21–0244, Revision 1, dated March 8, 2010: Within 72 months after the effective date of this AD, in the main equipment center, install drain tubing and muffler assemblies, change wire bundle W1718, change relays, placards, and wire bundle W5075 in the P136 left relay panel, change wire bundle W2006 in the E8 EICAS rack; and change wire bundle W1114 in the P50 electrical systems card file; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–21–0240, Revision 1, dated November 12, 2009; or Boeing Service Bulletin 767–21–0244, Revision 1, dated March 8, 2010; as applicable.

(i) Exception to Paragraph (h) of This AD

For Model 767–300F series airplanes identified as Group 1 airplanes in Boeing Service Bulletin 767–21–0245, Revision 1, dated September 30, 2010: If the 3-way valve control logic change in Boeing Service Bulletin 767–21–0235, dated July 29, 2011, is done prior to or concurrent with the actions required by paragraph (h)(2) of this AD, operators need to do only the functional test of the manifold interconnect valve control logic modification, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–21–0245, Revision 1, dated September 30, 2010. Operators do not need to do the other actions specified in the Accomplishment Instructions of Boeing Service Bulletin 767–21–0245, Revision 1, dated September 30, 2010, if the actions in the Accomplishment Instructions in Boeing Service Bulletin 767–21–0235, dated July 29, 2011, are done concurrently. If the functional test fails, before further flight, do corrective actions that are approved in accordance with

the procedures specified in paragraph (l) of this AD.

(j) Concurrent Requirements

For Model 767-300 series airplanes as identified in Boeing Service Bulletin 767-21-0240, Revision 1, dated November 12, 2009; and Boeing Service Bulletin 767-21-0244, Revision 1, dated March 8, 2012: Prior to or concurrently with accomplishing the requirements of paragraph (h)(3) of this AD, do all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 767-31-0073, dated October 12, 1995.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767-21-0245, dated April 16, 2010, which is not incorporated by reference in this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Controls Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: 425-917-6596; fax: 425-917-6590; email: francis.smith@faa.gov.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the

availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on September 16, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-23273 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0794; Directorate Identifier 2012-NM-157-AD]

RIN 2120-AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 2000EX airplanes. This proposed AD was prompted by a revision to the airplane airworthiness limitations to introduce a corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance program to include the maintenance tasks and airworthiness limitations specified in the airworthiness limitations section of the airplane maintenance manual. We are proposing this AD to prevent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments by any of the following methods:

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

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201-440-6700; Internet <http://www.dassaultfalcon.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; phone: 425-227-1137; fax: 425-227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0794; Directorate Identifier 2012-NM-157-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0157, dated August 23, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the

MCAI’), to correct an unsafe condition for the specified products. The MCAI states:*

The airworthiness limitations and maintenance requirements for the Falcon 2000EX type design are included in Dassault Aviation Falcon 2000EX (F2000EX) Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). EASA issued AD 2008–0221 [<http://ad.easa.europa.eu/ad/2008-0221.pdf>] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation F2000EX AMM chapter 5–40 at revision 3.

Since that AD was issued, Dassault Aviation issued F2000EX AMM chapter 5–40 at revision 7, which introduces new or more restrictive maintenance requirements and/or airworthiness limitations.

Dassault Aviation AMM chapter 5–40 revision 7 contains among other changes the following requirements:

- Inspection and test of horizontal stabilizer jackscrew;
- Test of various components of the electrical power system;
- Revised Time Between Overhaul for screwjack of flap actuators -3 version;
- Revised interval for checking the screw/nut play on screwjack of flap actuators -3 version;
- Removal of service life limit for screwjack of flap actuators;
- Test of flap asymmetry protection system. F2000EX AMM chapter 5–40

- at revision 7 introduces extended inspection interval;
- Tests of the auto brake system;
- Inspection procedures of fuselage and wings;
- Check of overpressure tightness on pressurization control regulating valves. Compliance with this check is required by EASA AD 2008-0072 [<http://ad.easa.europa.eu/ad/2008-0072.pdf>]. F2000EX AMM chapter 5–40 at revision 7 introduces extended inspection interval.

The maintenance tasks and airworthiness limitations, as specified in the F2000EX AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the F2000EX type design. Failure to comply with AMM chapter 5–40 at revision 7 might constitute an unsafe condition.

For the reasons described above, this AD requires the implementation of the maintenance tasks and airworthiness limitations, as specified in Dassault Aviation F2000EX AMM chapter 5–40 at revision 7.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 8, dated July 2012, of Chapter 5 of the Dassault Falcon 2000EX, Falcon 2000EX EASy, Falcon 2000DX, and Falcon 2000LX Maintenance Manual, dated July 16, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA’s Determination and Requirements of This Proposed AD

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

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Costs of Compliance

We estimate that this proposed AD affects 18 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance manual revision	1 work-hour × \$85 per hour = \$85	N/A	\$85	\$1,530

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2013–0794; Directorate Identifier 2012–NM–157–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

Certain requirements of this AD terminate the requirements of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for the airplanes identified in paragraph (c) of this AD.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000EX airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision to the airplane airworthiness limitations to introduce the corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 8, dated July 2012, of Chapter 5 of the Dassault Falcon 2000EX, Falcon 2000EX

EASy, Falcon 2000DX, and Falcon 2000LX Maintenance Manual, dated July 16, 2012. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 8, dated July 2012, of Chapter 5 of the Dassault Falcon 2000EX, Falcon 2000EX EASy, Falcon 2000DX, and Falcon 2000LX Maintenance Manual, dated July 16, 2012, is within the times specified in that maintenance manual, or 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term “landings” in the “First Inspection” column of any table in the service information means total airplane landings.

(2) The term “flight hours” in the “First Inspection” column of any table in the service information means total flight hours.

(3) The term “flight cycles” in the “First Inspection” column of any table in the service information means total flight cycles.

(4) For task number 52–20–00–610–801–01 52–205 the initial compliance time is within 24 months after the effective date of this AD.

(h) Terminating Action

Accomplishing paragraph (g) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for Dassault Aviation Model FALCON 2000EX Airplanes.

(i) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) **AMOCs:** The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1137. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) **Airworthy Product:** For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0157, dated August 23, 2012, for related information. The MCAI can be found in the AD docket on the Internet at <http://www.regulations.gov>.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet <http://www.dassaultfalcon.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23333 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0791; Directorate Identifier 2012–NM–026–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a report that an investigation showed that when a certain combination of a target/proximity sensor serial number is installed on a flap interconnecting strut, a “target FAR” signal cannot be detected when it reaches the mechanical end stop of the interconnecting strut. This proposed AD would require an inspection to determine the part number (P/N) of the interconnecting struts installed on the wings, identifying the P/N and the serial number (S/N) of the associated target and proximity sensor if applicable, and replacing or re-identifying the flap interconnecting strut if applicable. We are proposing

this AD to detect and correct a latent failure of the flap down drive disconnection due to an already-failed interconnecting strut sensor, which could result in asymmetric flap panel movement and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-1405; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2013-0791; Directorate Identifier 2012-NM-026-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0012, dated January 23, 2012 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

The flap interconnecting strut is a safety device of the High Lift System which acts as an alternative load path from one flap surface to another in case of a flap drive system disconnection. In such a failure case, the installed proximity provide information to the slat flap control computer (SFCC) and the operation of the flap drive system is inhibited.

A recent engineering investigation has shown that, when a certain combination of target/sensor serial number (s/n) is installed on a flap interconnecting strut, a “target FAR” signal cannot be detected when reaching the mechanical end stop of the interconnecting strut.

This condition, if not corrected, could cause a flap down drive disconnection to remain undetected, due to an already-failed interconnecting strut sensor, potentially resulting in asymmetric flap panel movement and consequent loss of control of the aeroplane.

For the reason described above, this [EASA] AD requires the identification and replacement [or re-identifying] of struts that have a certain target/sensor s/n combination installed.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320-27-1206, Revision 01, dated October 10, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA’s Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

Although note 1 of the EASA Airworthiness Directive 2012-0012, dated January 23, 2012, allows flight for 50 flight cycles after the inspection of the flap down drive if an interconnecting strut cannot be replaced, this proposed AD does not include this exception.

Costs of Compliance

We estimate that this proposed AD affects 755 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Re-identification.	8 work-hours × \$85 per hour = \$680 per inspection cycle.	\$0	\$680 per inspection cycle.	\$513,400 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	10 work-hours × \$85 per hour = \$850	\$0	\$850

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2013–0791; Directorate Identifier 2012–NM–026–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report that an investigation showed that when a certain combination of a target/proximity sensor serial number is installed on a flap interconnecting strut, a “target FAR” signal cannot be detected when reaching the mechanical end stop of the interconnecting strut. We are issuing this AD to detect and correct a latent failure of the flap down drive disconnection due to an already-failed interconnecting strut sensor, which could result in asymmetric flap panel movement and consequent loss of control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection To Determine the Part Number of the Interconnecting Struts

Within 8,000 flight hours after the effective date of this AD, inspect to determine the part number of the interconnecting struts installed on both the left-hand (LH) and right-hand (RH) wings of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011. A review of the airplane maintenance records is acceptable for determining the part number of the installed interconnecting struts, in lieu of the inspection, if the part number of the installed interconnecting struts, and the part number and the serial number of the associated target and proximity sensor, can be conclusively determined from that review.

(1) Airplanes on which Airbus modification 27956 has been embodied in production, on which no interconnecting strut having a part number specified in figure 1 to paragraph (g) of this AD, and has been replaced since the airplane’s first flight: No further work is required by paragraph (g) of this AD.

(2) If, during the inspection required by paragraph (g) of this AD, any interconnecting strut is installed with a part number specified in figure 1 to paragraph (g) of this AD: Within 8,000 flight hours after the effective date of this AD, determine the part number and the serial number of the associated target and proximity sensor.

FIGURE 1 TO PARAGRAPH (G) OF THIS AD—Interconnecting Strut Part Numbers

Interconnecting strut part numbers
D5757030500000
D5757030500100
D5757030500200
D5757030500600
D5757030500800
D5757030501000
D5757030501200
D5757032200000

(i) For airplanes having conditions specified in paragraphs (g)(2)(i)(A), (g)(2)(i)(B), (g)(2)(i)(C), and (g)(2)(i)(D) of this AD: Before further flight, replace the interconnecting strut with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–

27–1206, Revision 01, dated October 10, 2011. For the purpose of this AD, a serviceable interconnecting strut is a unit which has been determined to be in compliance with the requirements of this AD.

(A) A target part number (P/N) ABS0121–13 or P/N 8–536–01, and

(B) A target serial number lower than 1600, or a target serial number that is unreadable, and

(C) A proximity sensor having P/N ABS0121–31 or P/N 8–372–04, and

(D) A proximity sensor having a serial number between C59198 and C59435, or a serial number (S/N) C500000 or higher.

(ii) For a target having S/N 1600 or higher and target P/N ABS0121–13 or P/N 8–536–01: Within 8,000 flight hours after the effective date of this AD, re-identify the interconnecting strut, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an interconnecting strut with a part number specified in figure 1 to paragraph (g) of this AD, on any airplane, except for parts identified in paragraph (g)(2)(ii) of this AD, provided that the actions in paragraph (g)(2)(ii) are done.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–27–1206, dated January 28, 2011, and if additional work has been accomplished using Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State

of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0012, dated January 23, 2012, for related information, which can be found in the AD docket on the Internet at <http://www.regulations.gov>.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 13, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–23269 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0828; Directorate Identifier 2012–NM–036–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2009–15–17, which applied to certain Airbus Model A330–200 and –300; and Model A340–200 and –300 series airplanes. AD 2009–15–17 required an inspection for damage to the protective treatments or any corrosion of all main landing gear (MLG) bogie beams, and application of protective treatments if no damage or corrosion was found. If any damage or corrosion was found, corrective action followed by the application of protective treatments was required. Since we issued AD 2009–15–17, we received reports of thin paint coats and paint degradation on enhanced MLG bogie beams. This proposed AD would add repetitive detailed inspections of the MLG bogie beams. This proposed AD would also require modification of the MLG bogie beams, which would

terminate the repetitive inspections for any modified bogie beam. This proposed AD would also provide optional methods of compliance for inspections for corrosion, damage of the protective treatment, repair, and modification, of the MLG bogie beam. This proposed AD would also revise the applicability. We are proposing this AD to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or MLG collapse, which could result in damage to the airplane and injury to the occupants.

DATES: We must receive comments on this proposed AD by November 12, 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 Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>. For Messier-Dowty service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet <https://techpubs.services/messier-dowty.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0828; Directorate Identifier 2012-NM-036-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 2, 2009, we issued AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009), we received reports of thin paint coats and paint degradation on enhanced MLG bogie beams. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0015, dated January 23, 2012 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The operator of an A330 aeroplane (which has a common bogie beam with the A340) reported a fracture of the right-hand (RH) main landing gear (MLG) bogie beam, which occurred while turning during low speed taxi maneuvers. The bogie fractured aft of the pivot point and remained attached to the

sliding tube by the brake torque reaction rods. After this RH bogie failure, the aeroplane continued for approximately 40 meters on the forks of the sliding member before coming to rest on the taxiway.

The preliminary investigations revealed that this event was due to corrosion pitting occurring on the bore of the bogie beam. Investigations are ongoing to determine why bogie beam internal paint has been degraded, leading to a loss of cadmium plating, thereby allowing development of corrosion pitting.

This condition if not detected and corrected, could lead to a runway excursion event or to detachment of the bogie from the aeroplane, or to MLG collapse, possibly resulting in damage to the aeroplane and injury to the occupants.

To enable early detection and repair of corrosion of the internal surfaces, EASA issued EASA AD 2007-0314 to require a one-time inspection of all MLG bogie beams, except Enhanced MLG bogie beams, and the reporting of the results to Airbus. EASA AD 2007-0314 was revised and later superseded by EASA AD 2008-0093, reducing the inspection threshold.

The results of subsequent investigations showed thin paint coats and paint degradation, confirmed as well on Enhanced MLG bogie beams. To address this additional concern, EASA issued EASA AD 2011-0141 [which was not mandated by the FAA], retaining the requirements of EASA AD 2008-0093, which was superseded, to require a one-time visual inspection of all MLG bogie beams, including a visual examination of the internal diameter for corrosion or damage to protective treatments of the bogie beam and measurement of the paint thickness on the internal bore, accomplishment of the applicable corrective actions and a modification of the MLG bogie beam to improve the coat paint application method, and application of corrosion protection.

Prompted by in-service requests, this [EASA] AD retains the requirements of EASA AD 2011-0141, which is superseded, and introduces repetitive inspections [for damage to protective treatments or corrosion] of the MLG bogie beams, which allows extension of the compliance time for the MLG bogie beam modification [for improved protection from corrosion] from 15 years to 21 years. Modification of a MLG bogie beam constitutes terminating action for the repetitive inspections for that MLG bogie beam.

This proposed AD also provides optional methods of compliance for inspections for corrosion, damage of the protective treatment, repair, and modification, of the MLG bogie beam. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus and Messier-Dowty have issued the following service bulletins. The actions described in this service information are intended to correct the

unsafe condition identified in the MCAI.

- Airbus Mandatory Service Bulletins A330-32-3237 (for Model A330 series airplanes), dated January 18, 2011.

- Airbus Mandatory Service Bulletin A340-32-4279 (for Model A340 series airplanes), dated January 18, 2011.

- Messier-Dowty Service Bulletin A33/34-32-272, including Appendices A, B, C, and D, Revision 1, dated September 22, 2008.

- Messier-Dowty Service Bulletin A33/34-32-278, including Appendices A and B, dated February 17, 2010.

- Messier-Dowty Service Bulletin A33/34-32-283, including Appendix A, dated May 11, 2010.

- Messier-Dowty Service Bulletin A33/34-32-284, including Appendix A, dated May 11, 2010.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

This AD differs from the MCAI and/or service information as follows: The MCAI specifies repair and corrective actions in accordance with Airbus Mandatory Service Bulletin A330-32-3225, Revision 1, dated October 30, 2008; or A340-32-4268, Revision 1, dated October 30, 2008. However, Airbus Mandatory Service Bulletins A330-32-3225, Revision 1, dated October 30, 2008; and A340-32-4268, Revision 1, dated October 30, 2008; do not describe those actions. Paragraphs (g)(1)(i) and (g)(1)(ii) of this proposed AD specify repair and corrective actions in accordance with Messier-Dowty Service Bulletin A33/34-32-272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008.

Costs of Compliance

We estimate that this proposed AD affects 51 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and actions retained from AD 2009–15–17 (74 FR 37523, July 29, 2009).	22 work-hours × \$85 per hour = \$1,870 per inspection cycle.	\$0	\$1,870 per inspection cycle ...	\$95,370 per inspection cycle.
Inspection and modification [new proposed actions].	44 work-hours × \$85 per hour = \$3,740 per inspection cycle.	0	3,740 per inspection cycle	190,740 per inspection cycle.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009), and adding the following new AD:

Airbus: Docket No. FAA–2012–0828; Directorate Identifier 2012–NM–036–AD.

(a) Comments Due Date

We must receive comments by November 12, 2013.

(b) Affected ADs

This AD supersedes AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009).

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, except those airplanes on which Airbus modification 58896 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of thin paint coats and paint degradation on enhanced main landing gear (MLG) bogie beams. We are issuing this AD to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or main landing gear collapse, which could in result damage to the airplane and injury to the occupants.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Actions and Compliance

This paragraph restates the requirements of paragraph (f) of AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009). For Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes, all serial numbers, except those on which Airbus modification 54500 has been embodied in production or Airbus Service Bulletin A330–32–3212 has been embodied in service: Unless already done, do the following actions.

(1) At the applicable compliance time specified in paragraph (g)(2) or (g)(3) of this AD: Clean the internal bore and perform a detailed visual inspection of internal surfaces of the MLG bogie beam (right-hand and left-hand) for any damage to the protective treatments or any corrosion, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3225 or A340–32–4268, both Revision 01, both dated October 30, 2008; as applicable.

(i) If no damage and corrosion is found, before further flight, apply the protective

treatments of the bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34-32-272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008.

(ii) If any damage or corrosion is found, before further flight, do all applicable corrective actions and apply the protective treatments of the bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34-32-272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008.

(2) For airplanes with 54 months or less time-in-service since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): At the latest of the applicable times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD, do the actions required by paragraph (g)(1) of this AD.

(i) Not before 54 months since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness, but no later than 72 months since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness.

(ii) Not before 54 months since the installation of a new bogie beam in-service before September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)), but no later than 72 months since the installation of a new bogie beam in-service before September 2, 2009 (the effective date of AD 2009-15-17).

(iii) Not before 54 months since the last overhaul of a bogie beam before September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)), but no later than 72 months since the last overhaul of a bogie beam before September 2, 2009 (the effective date of AD 2009-15-17).

(3) For airplanes with more than 54 months time-in-service since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): At the applicable time specified in paragraph (g)(3)(i), (g)(3)(ii), (g)(3)(iii), (g)(3)(iv), or (g)(3)(v) of this AD, do the actions required by paragraph (g)(1) of this AD.

(i) For airplanes on which the bogie beam has not been replaced or overhauled since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): Within 18 months after September 2, 2009 (the effective date of AD 2009-15-17).

(ii) For airplanes on which the bogie beam has been replaced in-service with a new

bogie beam and the new bogie beam has more than 54 months time-in-service as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): Within 18 months after September 2, 2009 (the effective date of AD 2009-15-17).

(iii) For airplanes on which the bogie beam has been replaced in-service with a new bogie beam and the new bogie beam has 54 months or less time-in-service as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): Not before 54 months since the installation of a new bogie beam in-service before September 2, 2009 (the effective date of AD 2009-15-17), but no later than 72 months since the installation of a new bogie beam in-service before September 2, 2009 (the effective date of AD 2009-15-17).

(iv) For airplanes on which the bogie beam has been overhauled and the overhauled bogie beam has more than 54 months time-in-service as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): Within 18 months after September 2, 2009 (the effective date of AD 2009-15-17), or at the next scheduled bogie beam overhaul, whichever occurs first.

(v) For airplanes on which the bogie beam has been overhauled and the overhauled bogie beam has 54 months or less time-in-service as of September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)): Not before 54 months since the last overhaul of a bogie beam before September 2, 2009 (the effective date of AD 2009-15-17), but no later than 72 months since the last overhaul of a bogie beam before September 2, 2009 (the effective date of AD 2009-15-17).

(4) Within 30 days after accomplishment of the inspection required by paragraph (g)(1) of this AD, or within 30 days after September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)), whichever occurs later: Report the results, including no findings, to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; email *airworthiness.A330-A340@airbus.com*.

(5) Actions accomplished in accordance with Messier-Dowty Service Bulletin A33/34-32-271, Revision 1, including Appendices A and B, dated November 16, 2007, are considered acceptable for compliance with the corresponding requirements of this AD.

(6) Actions accomplished before September 2, 2009 (the effective date of AD 2009-15-17, Amendment 39-15980 (74 FR 37523, July 29, 2009)), in accordance with the service bulletins specified in paragraphs (g)(6)(i) through (g)(6)(iv) of this AD are considered acceptable for compliance with the corresponding requirements of this AD.

(i) Airbus Mandatory Service Bulletin A330-32-3225, dated November 21, 2007.

(ii) Airbus Mandatory Service Bulletin A340-32-4268, dated November 21, 2007.

(iii) Messier-Dowty Service Bulletin A33/34-32-271, including Appendix A, dated September 13, 2007.

(iv) Messier-Dowty Service Bulletin A33/34-32-272, including Appendices A, B, C, and D, dated November 16, 2007.

(h) New Requirement of This AD: Repetitive Inspections

For Airbus Model A330-201, -202, -203, -223, -223F, -243, -243F, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes; and Model A340-211, -212, -213, -311, -312, and -313 airplanes; all manufacturer serial numbers, except those airplanes on which Airbus modification 58896 has been embodied in production: Repeat the inspection required by paragraph (g)(1) of this AD at intervals not to exceed 72 months, but not before 48 months since first flight after the most recent MLG bogie beam overhaul done after the most recent inspection, until the modification specified in paragraph (i) of this AD is done.

(i) New Inspection and Modification

For Airbus Model A330-201, -202, -203, -223, -223F, -243, -243F, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes; and Model A340-211, -212, -213, -311, -312, and -313 airplanes; all manufacturer serial numbers, except those airplanes on which Airbus modification 58896 has been embodied in production: Before the accumulation of 252 months on a MLG bogie beam, or within 90 days after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Do a detailed inspection for damage and corrosion of the internal bores of the MLG bogie beam, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-32-3237 or A340-32-4279, both dated January 18, 2011, as applicable. If any damage or corrosion is found, repair, as applicable, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-32-3237 or A340-32-4279, both dated January 18, 2011, as applicable.

(2) Modify and re-identify, as applicable, the MLG bogie beam, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-32-3237 or A340-32-4279, both dated January 18, 2011, as applicable.

(j) New Optional Terminating Action

For Airbus Model A330-201, -202, -203, -223, -223F, -243, -243F, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes; and Model A340-211, -212, -213, -311, -312, and -313 airplanes; all manufacturer serial numbers, except those airplanes on which Airbus modification 58896 has been embodied in production: Modification of a MLG bogie beam done in accordance with paragraph (i) of this AD, terminates the repetitive inspections required by paragraphs (g) and (h) of this AD for that modified MLG bogie beam.

(k) New Exception to Service Information Specifications

The inspection requirement of paragraph (i)(1) of this AD and the modification requirement of paragraph (i)(2) of this AD do not apply to any MLG bogie beam having any serial number listed in Appendix A of

Messier-Dowty Service Bulletin A33/34-32-283 or A33/34-32-284, both including Appendix A, both dated May 11, 2010, as applicable.

(l) New Optional Methods of Compliance

(1) Inspections for corrosion and damage to the protective treatment of the bogie beam, and repairs, done in accordance with Messier-Dowty Service Bulletin A33/34-32-278, including appendices A and B, dated February 17, 2010, are acceptable methods of compliance with the requirements of paragraph (i)(1) of this AD.

(2) Modification of a MLG bogie beam, done in accordance with Messier-Dowty Service Bulletins A33/34-32-283 and A33/34-32-284, both including Appendix A, both dated May 11, 2010, as applicable, is an acceptable method of compliance with the requirements of paragraph (i)(2) of this AD.

(m) New Parts Installation Limitation

As of the effective date of this AD, no person may install a MLG bogie beam on any airplane unless it is in compliance with the requirements and compliance times of paragraphs (g), (h), and (i) of this AD.

(n) New Reporting Requirement

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) or (i) of this AD to Airbus, Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, using the applicable reporting sheet in Airbus Service Bulletin A330-32-3237 or A340-32-4279, both dated January 18, 2011, at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *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 were approved by the State of Design Authority (or its delegated agent). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(p) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2012-0015, dated January 23, 2012, for related information, which can be found in the AD docket on the internet at <http://www.regulations.gov>.

Issued in Renton, Washington, on September 17, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-23324 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0796; Directorate Identifier 2013-NM-111-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2013-07-07, which applies to all The Boeing Company Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes. AD 2013-07-07 requires inspecting to determine the part number

of the attach pins of the horizontal stabilizer rear spar, and replacing certain attach pins. Since we issued AD 2013-07-07, we received inquiries from affected operators regarding the parts installation limitation and prohibition, and re-installation of certain attach pins that were removed for inspection. This proposed AD would clarify the parts installation limitation and prohibition, and would add a new requirement for certain airplanes on which certain attach pins were installed. We are proposing this AD to prevent premature failure of the attach pins, which could cause reduced structural integrity of the horizontal stabilizer to fuselage attachment, resulting in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- *Fax*: 202-493-2251.

- *Mail*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6440; fax: 425-917-6590; email: Nancy.Marsh@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2013-0796; Directorate Identifier 2013-NM-111-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On March 28, 2013, we issued AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013) ("AD 2013-07-07"), for all Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes. AD 2013-07-07 requires inspecting to determine the part number of the attach pins of the horizontal stabilizer rear spar, and replacing certain attach pins. For airplanes having line numbers 1 through 3534, AD 2013-07-07 also prohibited installing attach pins having part number (P/N) 180A1612-3 or 180A1612-4 that have 56,000 or greater flight cycles, unless certain actions had been done. AD 2013-07-07 resulted from reports of an incorrect procedure used to apply the wear and corrosion protection surface coating to attach pins of the horizontal stabilizer rear spar. We issued AD 2013-

07-07 to prevent premature failure of the attach pins, which could cause reduced structural integrity of the horizontal stabilizer to fuselage attachment, resulting in loss of control of the airplane.

Actions Since AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013) Was Issued

Since we issued AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), we have received inquiries from affected operators regarding the parts installation limitation and prohibition (i.e., paragraph (i)(1)) of AD 2013-07-07, and re-installation of certain attach pins of the horizontal stabilizer rear spar removed for inspection during maintenance.

We have re-reviewed our response to commenter Japan Airlines (JAL) in AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), and have determined it is necessary to provide further clarification. JAL requested approval of re-installation of any non-discrepant attach pins having P/N 180A1612-3 or 180A1612-4 removed for inspection during maintenance.

We clarify that the term "install," as used in AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), can be interpreted as meaning "replace" while remaining within the intent of AD 2013-07-07. That is, by simply re-installing non-discrepant attach pins having P/N 180A1612-3 or 180A1612-4 on the same airplane from which they were removed, the operator is not "installing" a new or different attach pin. Therefore, no alternative method of compliance is necessary to re-install non-discrepant attach pins having P/N 180A1612-3 or 180A1612-4 on the same airplane from which they were removed during maintenance not associated with AD 2013-07-07.

To clarify paragraph (i)(1) of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), for airplanes having line numbers 1 through 3534, we have removed that paragraph and have added new paragraph (k) to this proposed AD. New paragraph (k) of this proposed AD would provide for installation of a attach pin of the horizontal stabilizer rear spar having

P/N 180A1612-3 or 180A1612-4, provided it is replaced with an attach pin having P/N 180A1612-7 or 180A1612-8 prior to the accumulation of 56,000 total flight cycles on the pin.

In addition, for those same airplanes, paragraph (i)(1) of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), inadvertently allowed installation of an attach pin having P/N 180A1612-3 or 180A1612-4, even though the attach pin had been replaced with an attach pin having P/N 180A1612-7 or 180A1612-8, as required by paragraph (h) of AD 2013-07-07. In light of this, we have added new paragraph (l) to this proposed AD for those airplanes on which attach pins having P/N 180A1612-3 or 180A1612-4 were installed. New paragraph (l) of this proposed AD would require replacement of those attach pins with attach pins having P/N 180A1612-7 or 180A1612-8 prior to the accumulation of 56,000 total flight cycles on the attach pin, or within 1,000 flight cycles on the airplane after the effective date of this AD, whichever occurs later.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain certain requirements of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013). This proposed AD would clarify the parts installation limitation and prohibition, and would add a new requirement for certain airplanes on which certain attach pins were installed.

Costs of Compliance

We estimate that this proposed AD affects 1,050 airplanes of U.S. registry. The new proposed requirements add no significant economic burden over that specified in AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013). Those costs are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and attach pin replacement [retained actions from AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013)].	39 work-hours × \$85 per hour = \$3,315.	Up to \$6,312	Up to \$9,627	Up to \$10,108,350.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), and adding the following new AD:

The Boeing Company: Docket No. FAA-2013-0796; Directorate Identifier 2013-NM-111-AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 12, 2013.

(b) Affected ADs

(1) This AD supersedes AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013).

(2) This AD affects certain requirements of AD 2004-05-19, Amendment 39-13514 (69 FR 10921, March 9, 2004; corrected April 13, 2004 (69 FR 19313)).

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (m) of this AD.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of an incorrect procedure used to apply the wear and corrosion protection surface coating to attach pins of the horizontal stabilizer rear spar. We are issuing this AD to prevent premature failure of the attach pins, which could cause reduced structural integrity of the horizontal stabilizer to fuselage attachment, resulting in loss of control of the airplane.

(f) Compliance

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

(g) Retained Part Number Inspection

This paragraph restates the requirements of paragraph (g) of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013). For airplanes having line numbers 1 through 3534 inclusive: Before the accumulation of 56,000 total flight cycles, or within 3,000 flight cycles after May 20, 2013 (the effective date of AD 2013-07-07), whichever occurs later, inspect to determine the part number of the attach pins of the horizontal stabilizer rear spar. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the attach pin can be conclusively determined from that review.

(h) Retained Replacement

This paragraph restates the requirements of paragraph (h) of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013). If, during the inspection required by paragraph (g) of this AD, any horizontal stabilizer rear spar attach pin has P/N 180A1612-3 or 180A1612-4, prior to the accumulation of 56,000 total flight cycles on the pin, or within 3,000 flight cycles after May 20, 2013 (the effective date of AD 2013-07-07), whichever occurs later, replace with a new attach pin having P/N 180A1612-7 or 180A1612-8, respectively, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-55-1093, dated April 9, 2012.

(i) Retained Parts Installation Prohibition

This paragraph restates the requirements of paragraph (i)(2) of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013). For airplanes having line numbers 3535 and subsequent: As of May 20, 2013 (the effective date of AD 2013-07-07), no person may install an attach pin of the horizontal stabilizer rear spar having P/N 180A1612-3 or 180A1612-4 on any airplane.

(j) Retained Terminating Action for AD 2004-05-19, Amendment 39 13514 (69 FR 10921, March 9, 2004; Corrected April 13, 2004 (69 FR 19313))

This paragraph restates the provisions of paragraph (j) of AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013). Accomplishment of the actions required by paragraphs (g) and (h) of this AD terminates the requirements of paragraphs (a), (b), (c), (d), and (e) of AD 2004-05-19, Amendment 39-13514 (69 FR 10921, March 9, 2004; corrected April 13, 2004 (69 FR 19313)), for the rear spar attach pins only.

(k) New Parts Installation Limitation

For airplanes having line numbers 1 through 3534 inclusive: As of the effective date of this AD, an attach pin of the horizontal stabilizer rear spar having P/N 180A1612-3 or 180A1612-4 may be installed on an airplane, provided it is replaced with an attach pin having P/N 180A1612-7 or 180A1612-8, as applicable, prior to the accumulation of 56,000 total flight cycles on the attach pin. The replacement must be done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-55-1093, dated April 9, 2012.

(l) New Attach Pin Replacement

For airplanes having line numbers 1 through 3534 inclusive on which an attach pin of the horizontal stabilizer rear spar having P/N 180A1612-7 or 180A1612-8 has been replaced with an attach pin having P/N 180A1612-3 or 180A1612-4 before the effective date of this AD: Prior to the accumulation of 56,000 total flight cycles on the pin, or within 1,000 flight cycles on the airplane after the effective date of this AD, whichever occurs later, replace the attach pin having P/N 180A1612-3 or 180A1612-4 with an attach pin having P/N 180A1612-7 or 180A1612-8, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-55-1093, dated April 9, 2012.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to 9-ANM-Seattle-ACO-AMOC-Requests-faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2013-07-07, Amendment 39-17411 (78 FR 22182, April 15, 2013), are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6440; fax: 425-917-6590; email: Nancy.Marsh@faa.gov.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on September 17, 2013.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-23274 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-13-P

DELAWARE RIVER BASIN COMMISSION**18 CFR Part 410****Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Update Water Quality Criteria for pH**

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update stream quality objectives (also called "water quality criteria") for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

DATES: The public hearing will be held at 2 p.m. on Thursday, October 24, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5 p.m. on Thursday, November 21, 2013. For more information regarding the procedures for the hearing and comments, see Supplementary Information.

ADDRESSES: The public hearing will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's Web site.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by

hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 a.m. through 5 p.m. except on national holidays) until the close of the comment period at 5 p.m. on Thursday, November 21, 2013. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "pH Rulemaking" in the subject line.

FOR FURTHER INFORMATION CONTACT: The rule text and a report entitled "pH Criteria Revision Recommendations for Interstate Waters of the Delaware River Basin: Basis & Background Document" (DRBC, March 2013) are available on the Commission's Web site, www.drbc.net. Hard copies of the latter document may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Erik Silldorff at 609-883-9500 ext. 234. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

SUPPLEMENTARY INFORMATION:

Background. The Commission in 1967 assigned stream quality objectives (also called "criteria") for pH to all tidal and non-tidal interstate streams in the Delaware River Basin ("basin"). Since that time, scientists' understanding of natural fluctuations in freshwater and saltwater pH levels has grown. Likewise, the development and application of pH criteria have evolved, while the Commission's pH stream quality objectives have remained unchanged. Commission scientists in consultation with experts from DRBC member states and federal agencies have evaluated the pH criteria adopted by signatory states and recommended by federal agencies over the past four-and-a-half decades. They have concluded that in order to minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River, two classes of revisions to the Commission's criteria for this shared interstate waterway should be considered. The first concerns the range of pH levels deemed to comprise the numeric standard within the tidal and non-tidal zones of the main stem and tidal portions of tributaries. The second concerns excursions outside the standard range that are attributable to natural conditions. The proposed revisions were unanimously endorsed by the Commission's Water Quality Advisory Committee ("WQAC") in March 2009. The WQAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers, academicians and

environmental organizations that advises the Commission on technical matters relating to water quality within the basin.

Proposed Change to Existing Criteria. The Commission's existing pH criteria applicable to the main stem are expressed as ranges. "Between 6.0 and 8.5" is the range currently assigned to all freshwater (non-tidal) zones of the main stem Delaware River—DRBC Water Quality Zones 1A through 1E. In all tidal zones—DRBC Water Quality Zones 2 through 6, which include the tidal main stem and tidal portions of its tributaries—the pH range currently in effect is "between 6.5 and 8.5". The proposed amendments would make 6.5 the lower threshold of acceptable pH conditions for all water quality zones encompassing reaches of the main stem and tidal portions of its tributaries.

Natural Conditions Clause. The proposed amendments would add a clause to the pH criteria recognizing natural deviations outside the 6.5 to 8.5 pH range in the moderately acidic waters draining the Catskill Mountains and Pocono Plateau, the high-light and high-productivity zones of the non-tidal main stem, and the acidic coastal plain tidewaters of the Delaware Estuary.

Proposed Rule Text. In accordance with these proposed changes, the pH criteria for Water Quality Zones 1A through 1E (non-tidal main stem) and 2 through 6 (tidal main stem and tidal portions of tributaries) are proposed to be amended to read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions." The affected sections of the Commission's *Water Quality Regulations* consist of subsection C.3 of each of sections 2.20.2 through 2.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there (currently, December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

Dated: September 17, 2013.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2013-23029 Filed 9-24-13; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG-2004-19621]

RIN 1625-AA89

Dry Cargo Residue Discharges in the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of the Final Environmental Impact Statement (FEIS) assessing the potential environmental impacts associated with a proposed final rule to regulate discharges of dry cargo residue (DCR) in the Great Lakes. The Coast Guard requests public comment on the FEIS.

DATES: Comments and related material must reach the Docket Management Facility on or before October 25, 2013.

ADDRESSES: You may submit or view comments or related material identified by docket number USCG-2004-19621 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Timothy P. O'Brien, Coast Guard; telephone 202-372-1539, email Timothy.P.O'Brien@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969, codified at 42 U.S.C. 4321-4370f, Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D, we are making available to the public our FEIS assessing the potential environmental impacts associated with a proposed final rule to

regulate discharges of dry cargo residue in the Great Lakes.

In August 2008, the Coast Guard issued an Environmental Impact Statement (the Phase I FEIS), which evaluated regulatory alternatives for discharging DCR into the Great Lakes. Based in part on that FEIS's findings, we published an interim rule on September 29, 2008 (73 FR 56492). It kept in place the Coast Guard's interim enforcement policy for Great Lakes DCR discharges and announced our intention to research Phase I FEIS data gaps related to DCR discharge control measure costs and effectiveness.

The Phase II FEIS we are now making available is "tiered" off the Phase I FEIS, addresses the Phase I FEIS data gaps, and would provide support for a Coast Guard final rule to take the place of the 2008 interim rule. It finalizes the Phase II draft EIS that we made available for public comment when we issued a supplemental notice of proposed rulemaking (77 FR 44528; Jul. 30, 2012) to propose the final rule. The Phase II FEIS reviews data we collected from approximately 2,000 DCR reporting forms and 30 Coast Guard-observed dry cargo loading and unloading operations. Data collected permitted further evaluations of DCR quantities and the effectiveness of control measures. The Phase II FEIS analysis concludes that the final rule would require maintaining a "broom-clean" standard on the vessel deck and implementing a management plan to minimize DCR discharges from a vessel's deck and tunnel. Vessels would need to keep onboard records of DCR-related discharges and continue observing existing DCR discharge exclusion areas. Mitigation of nearshore and port impacts would be included through a prohibition of limestone and clean stone DCR discharges within 3 statute miles of shore. In the Western Basin of Lake Erie, vessels not traveling beyond 3 statute miles from shore could discharge DCR within dredged navigation channels and not create adverse impacts to native sediment or benthos.

We encourage you to submit comments or related material on the FEIS. Please include your personal contact information so we can contact you if we need to follow up. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. Anyone can search <http://www.regulations.gov> using a comment submitter's personal information; for more information see the Department of Transportation's Privacy Act notice (73

FR 3316; Jan. 17, 2008). We will consider all comments and material received during the comment period. Currently, we have no plans to hold public meetings in connection with this notice, but if you think such a meeting would be beneficial, contact us (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The Coast Guard issues this notice under authority of the Freedom of Information Act, codified at 5 U.S.C. 552(a).

Dated: September 15, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. 2013-23283 Filed 9-24-13; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R09-OAR-2013-0009; FRL-9901-28-Region9]

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extended comment period.

SUMMARY: On February 5, 2013, EPA proposed a Best Available Retrofit Technology (BART) determination for oxides of nitrogen (NO_x) for the Navajo Generating Station (NGS), located on the Navajo Nation, and provided a three-month period to accept public comments that was scheduled to close on May 6, 2013. At the request of interested stakeholders, EPA extended the comment period on two occasions, first on March 19, 2013, and again on July 9, 2013. The comment period was scheduled to close October 4, 2013. Additionally, on June 19, 2013, EPA announced our intention to hold five public hearings to accept written and oral comment on our proposed BART determination for NGS. On July 26, 2013, a group of stakeholders, known as the Technical Work Group (TWG), submitted its recommendation for an additional BART Alternative to EPA for consideration (TWG Alternative). EPA is in the process of evaluating this alternative. Because EPA has not yet announced the schedule for the public hearings, and because EPA is still

evaluating the TWG Alternative and may supplement our February 5, 2013 proposal, EPA is extending the comment period an additional three months. EPA intends to hold the public hearings prior to the close of this extended comment period and to announce the schedule shortly.

DATES: Comments on the proposed rulemaking for NGS must be postmarked no later than January 6, 2014.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0009, by one of the following methods:

(1) *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

(2) *Email:* r9ngsbart@epa.gov.

(3) *Mail or deliver:* Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

For more detailed instructions concerning how to submit comments on this proposed rule, and for more information on our proposed rule, please see the notice of proposed rulemaking, published in the **Federal Register** on February 5, 2013 (78 FR 8274).

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email. www.regulations.gov is an “anonymous access” system, and EPA 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 EPA, your email address will be automatically captured and included as part of the public comment. 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.

Hearings: EPA intends to schedule five public hearings to accept oral and written comments on the proposed rulemaking. EPA intends to hold the public hearings at locations on the Navajo Nation and the Hopi Tribe, as well as in Page, Phoenix, and Tucson, Arizona. EPA will provide notice and additional details related to the hearings in the **Federal Register**, on our Web site,

and in the docket for this proposed rulemaking.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972-3958, r9ngsbart@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we”, “us”, and “our” refer to EPA.

Table of Contents

- I. Background
- II. Today's Action

I. Background

NGS is a coal-fired power plant located on the Navajo Nation Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, Arizona. Emissions of NO_x from NGS affect visibility at 11 National Parks and Wilderness Areas that are designated as Class I federal areas (Class I areas), mandated by Congress to receive heightened protection. NGS is subject to the BART requirement of the CAA and the Regional Haze Rule (RHR) based on its age and its effects on visibility in Class I areas.

On February 5, 2013, EPA proposed a BART determination to require NGS to achieve a nearly 80 percent reduction of its current overall NO_x emission rate. EPA also proposed an alternative to BART that would provide flexibility to NGS in the schedule for the installation of new post-combustion control equipment. As discussed in more detail in our proposed rulemaking, EPA proposed to exercise its authority and discretion under section 301(d)(4) of the CAA (42 U.S.C. § 7601(d)(4)), and the Tribal Authority Rule (40 CFR 49.11(a)), to credit NGS for its early and voluntary installation of new combustion controls and to propose an extended timeframe for NGS for alternative measures to BART under the RHR.

In recognition that there may be other approaches that could result in better visibility benefits than BART, as well as the importance of NGS to the Navajo Nation, Hopi Tribe, the Gila River Indian Community, and numerous other

tribes located in Arizona, EPA also outlined a framework for evaluating other BART alternatives (“better than BART” alternatives) that provide greater emission reductions than EPA’s proposed BART alternative in exchange for greater flexibility.

EPA encouraged a robust public discussion of our proposed BART determination and alternative, as well as other possible alternatives, and recognized the potential need for a supplemental proposal if approaches developed by other parties are identified as meeting the requirements of the CAA.

EPA received requests for a 90-day extension of the public comment period from the Navajo Nation, the Gila River Indian Community (Gila River, or the Community), Salt River Project Agricultural Improvement and Power District (SRP), and the Central Arizona Water Conservation District (CAWCD), in order to allow stakeholders time to develop alternatives to BART for EPA’s consideration. On March 19, 2013, EPA extended the close of the public comment period to August 5, 2013 (78 FR 16825).

On June 10, 2013, EPA signed a notice, published on June 19, 2013, of our intent to hold five public hearings throughout the state of Arizona (78 FR 36716). EPA intends to hold hearings at one location each on reservation lands of the Navajo Nation and Hopi Tribe, and in Page, Phoenix, and Tucson, Arizona.

On June 20, 2013, SRP submitted a letter, on behalf of six stakeholders, requesting another extension of the comment period for NGS. On July 9, 2013, EPA extended the close of the public comment period to October 4, 2013 (78 FR 41012).

On July 26, 2013, a group of stakeholders known as the Technical Work Group (TWG) and consisting of the CAWCD, the Environmental Defense Fund (EDF), Gila River, Navajo Nation, SRP, on behalf of itself and the other non-federal Participants, Interior, and Western Resource Advocates, submitted a document to EPA memorializing a multi-party agreement (the TWG Agreement).¹ The TWG Alternative to BART was included as Appendix B to the TWG Agreement. EPA is currently evaluating the TWG Alternative to determine if it is consistent with the RHR and the framework for “better than BART” Alternatives put forth in our February 5, 2013 proposed rulemaking.

¹ See “Technical Work Group Agreement Related to Navajo Generating Station (NGS)” dated July 25, 2013, and submitted to EPA on July 26, 2013, in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009–0122.

Because EPA has not yet scheduled the public hearings for NGS and because we are still evaluating the TWG Alternative, EPA is extending the close of the comment period to accept written and oral comment on our proposed rulemaking for NGS.

II. Today’s Action

In today’s action, EPA is extending the close of the comment period for our proposed rulemaking for NGS by three months, to January 6, 2014. EPA intends to announce the schedule for public hearings in a forthcoming notice in the **Federal Register**.

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Nitrogen Dioxide.

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

Dated: September 16, 2013.

Elizabeth Adams,

Acting Air Division Director, Region 9.

[FR Doc. 2013–23246 Filed 9–24–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2013–0027; FRL–9819–7]

Louisiana: Final Authorization of State-initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: During a review of Louisiana’s regulations, EPA identified a variety of State-initiated changes to Louisiana’s hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended, for which the State had not previously sought authorization. EPA proposes to authorize the State for the program changes. In addition, EPA proposes to codify in the regulations entitled “Approved State Hazardous Waste Management Programs”, Louisiana’s authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will enforce under RCRA.

DATES: Send written comments by October 25, 2013.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional

Authorization Coordinator, or Julia Banks, Codification Coordinator (6PD–O), Multimedia Planning and Permitting Division at the address shown below. You can examine copies of the materials that form the basis for this authorization and incorporation by reference during normal business hours at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6533 or (214) 665–8178. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson or Julia Banks at (214) 665–8533 or (214) 665–8178.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” section of this **Federal Register**, the EPA is authorizing the changes to the Louisiana program, and codifying and incorporating by reference the State’s hazardous waste program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this authorization and incorporation by reference in the preamble to the direct final rule. Unless we get written comments which oppose this authorization and incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the immediate final rule published in the “Rules and Regulations” section of this **Federal Register**.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: May 2, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2013–22969 Filed 9–24–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 143****46 CFR Parts 110 and 111**

[Docket No. USCG–2012–0850]

RIN 1625–AC00

Electrical Equipment in Hazardous Locations; Extension of Comment Period**AGENCY:** Coast Guard, DHS.**ACTION:** Proposed rule; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period for the notice of proposed rulemaking (NPRM) entitled “Electrical Equipment in Hazardous Locations,” published on June 24, 2013, until November 30, 2013. We are extending the comment period at the request of industry to ensure stakeholders have adequate time to submit complete responses.

DATES: The comment period for the proposed rule published June 24, 2013 (78 FR 37760) is extended. Comments and related material must be submitted and received on or before November 30, 2013.

ADDRESSES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> or reach the Docket Management Facility by the date given above. You may submit comments identified by docket number USCG–2012–0850 using any one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed

rule, call or email Mr. Raymond Martin, Systems Engineering Division (CG–ENG–3), Coast Guard; telephone 202–372–1384, email Raymond.W.Martin@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0850), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert “USCG–2012–0850” in the “Search” box. Click on “Submit a Comment” in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert “USCG–2012–0850” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in

Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Regulatory History and Information

The Coast Guard published an NPRM entitled “Electrical Equipment in Hazardous Locations” on June 24, 2013 (78 FR 37760) proposing to amend its regulations. This proposed subpart would be applicable to foreign Mobile Offshore Drilling Units (MODUs), floating facilities, and vessels that engage in OCS activities for the first time after the effective date of the regulations. The proposed subpart would also be applicable to newly constructed U.S. MODUs, floating facilities, and vessels, excluding offshore supply vessels (OSVs). The proposed regulations would expand the list of national and international explosion protection standards deemed acceptable, as well as add the internationally accepted independent third-party certification system, the IEC System for Certification to Standards relating to Equipment for use in Explosive Atmospheres, as an accepted method of testing and certifying electrical equipment intended for use in hazardous locations. The proposed regulations would also provide owners and operators of existing U.S. MODUs, floating OCS facilities, and vessels, other than OSVs, that engage in OCS activities and U.S. tank vessels that carry flammable or combustible cargoes the option of choosing between the compliance regime contained in existing regulations or the one contained in the proposed subpart 111.108. All comments on this NPRM were originally due by September 23, 2013.

III. Background and Purpose

On September 6, 2013, we received a letter from the International Association of Drilling Contractors requesting an extension of the comment period until November 30, 2013. It noted additional

time was desired to review the proposal and its regulatory analysis. The U.S. Coast Guard is extending the public comment period, as requested, to ensure

stakeholders have adequate time to submit complete responses.

IV. Authority

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: September 18, 2013.

F.J. Sturm,

Acting, Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2013-23280 Filed 9-24-13; 8:45 am]

BILLING CODE 9110-04-P

Notices

Federal Register

Vol. 78, No. 186

Wednesday, September 25, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 19, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

National Appeals Division

Title: National Appeals Division Customer Service Survey.

OMB Control Number: 0503-0007.

Summary of Collection: The Secretary of Agriculture established the National Appeals Division (NAD) on October 20, 1994, by Secretary's Memorandum 1010-1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, Section 271, dated October 13, 1994). The Act consolidated the appellate functions and staff of several USDA agencies. The intent is to provide for independent hearing and review determinations that resulted from Agency adverse decisions. Hearing Officers conduct evidentiary hearings on adverse decisions or, when the appellant requests they review the Agency's record of the adverse decision without a hearing. Although NAD maintains a database to track appeal requests, the database contains only information necessary to process the appeal request, such as the name, address, filing data, and final results of the appeal. NAD will collect information using a survey.

Need and Use of the Information: NAD wants to gather current data to measure the appellant's perception of the quality of how easy the determination was to read; how intently the Hearing Officer listened to the appellant; and if the appellant would be willing to have the same Hearing Officer hear a future appeal. NAD will also use the information gathered from its surveys to tailor and prioritize training.

Description of Respondents: Individuals or households.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 292.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013-23305 Filed 9-24-13; 8:45 am]

BILLING CODE 3410-WY-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2013-0082]

Notice of Request for Extension of Approval of an Information Collection; Importation of Fresh Pomegranates From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of fresh pomegranates from Chile into the continental United States.

DATES: We will consider all comments that we receive on or before November 25, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0082-0001>.

Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2013-0082, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0082> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of fresh pomegranates from Chile, contact Ms. Claudia Ferguson, Regulatory Policy Specialist, RCC, RPM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2352. For copies of more detailed information

on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fresh Pomegranates From Chile.

OMB Number: 0579-0375.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of certain fruits and vegetables in accordance with the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-59).

Under these regulations, fresh pomegranates from Chile may be imported into the continental United States under certain conditions, as listed in 7 CFR 319.56-56, to prevent the introduction of plant pests into the United States. The regulations require information collection activities, including production site registration, list of certified production sites, labeling of containers with the registered production site identified, and a phytosanitary certificate with an additional declaration.

Since the last approval, we have decreased the estimated number of respondents from 7 to 3, and we have also decreased the estimated total annual burden on respondents from 158 hours to 150 hours. We decreased these numbers because we discovered duplications in our calculations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5263 hours per response.

Respondents: Fresh pomegranates production sites, packinghouses, importers of fresh pomegranates from Chile, and the national plant protection organization of Chile.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 95.

Estimated annual number of responses: 285.

Estimated total annual burden on respondents: 150 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 19th day of September 2013.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-23307 Filed 9-24-13; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2013-0075]

Notice of Request for Extension of Approval of an Information Collection; Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the interstate

movement of regulated nursery stock and fruit from quarantined areas to prevent the spread of citrus canker.

DATES: We will consider all comments that we receive on or before *November 25, 2013*.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0075-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2013-0075, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0075> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the interstate movement of regulated nursery stock and fruit from citrus canker quarantined areas, contact Ms. Lynn Evans-Goldner, National Policy Manager, PHP, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737; (301) 851-2286. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Citrus Canker; Interstate Movement of Regulated Nursery Stock and Fruit From Quarantined Areas.

OMB Number: 0579-0317.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as citrus canker, that are new to or not widely distributed within the United States.

Citrus canker is a plant disease that affects plant and plant parts, including fresh fruit of citrus and citrus relatives (family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause

lesions on the fruit of infected plants and cause infected fruit to drop from trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

APHIS regulations to prevent the interstate spread of citrus canker are contained in "Subpart—Citrus Canker" (7 CFR 301.75–1 through 301.75–17). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide, among other things, conditions under which regulated nursery stock and fruit may be moved interstate. The interstate movement of regulated nursery stock and fruit from quarantined areas involves information collection activities, including cooperative agreements, certificates, and limited permits.

Since the last approval, we have adjusted the number of respondents due to an increase in shipping requests for citrus from Florida, and as a result, the estimated total annual burden on respondents has increased to 1,943 hours.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Citrus growers and packinghouses.

Estimated annual number of respondents: 371.

Estimated annual number of responses per respondent: 26.

Estimated annual number of responses: 9,642.

Estimated total annual burden on respondents: 1,943 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 19th day of September 2013.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–23309 Filed 9–24–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0068]

Notice of Request for Extension of Approval of an Information Collection; *Phytophthora Ramorum*; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the interstate movement of regulated articles to prevent the spread of *Phytophthora ramorum*.

DATES: We will consider all comments that we receive on or before November 25, 2013.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-013-0068-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/>

#!docketDetail;D=APHIS-2013-0068 or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the interstate movement of regulated articles to prevent the spread of *Phytophthora ramorum*, contact Dr. Prakash K. Hebbar, National Policy Manager, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1231; (301) 851–2228. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: *Phytophthora Ramorum*; Quarantine and Regulations.

OMB Number: 0579–0310.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

In accordance with the regulations in "Subpart—*Phytophthora Ramorum*" (§§ 301.92 through 301.92–12), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) restricts the interstate movement of certain articles to prevent the spread of *Phytophthora ramorum*, the plant pathogen that causes the disease commonly known as sudden oak death. The regulations contain requirements for the interstate movement of regulated articles, such as nursery stock and certain trees, from both quarantined and nonquarantined areas and involve information collection activities, including an USDA-APHIS Plant Protection and Quarantine (PPQ) Compliance Agreement (PPQ Form 519), issuance and cancellation of certificates, maintaining records of shipments, and records of fungicide applications.

Since the last approval of these collection activities, there have been several changes to the *P. ramorum* program. APHIS no longer applies the *P. ramorum* regulatory requirements to the interstate movement of non-host nursery stock from certain nurseries located in the regulated areas of California,

Oregon, and Washington. We have also adjusted the number of record keepers of fungicide applications to more accurately reflect the number of nurseries. In addition, we have reduced the number of record keepers for incoming and outgoing shipments of plants to reflect the number of host nurseries and farms that record shipments. All of these changes have led to changes in our burden estimates. For instance, we have increased the estimate of burden from 0.31 to 1.097 hours per response and increased the estimated total annual burden on respondents from 2,263 to 4,076 hours. We have also decreased the estimated annual number of responses and the estimated annual number of responses per respondent from 7,227 to 3,717 and 5.06 to 2.26, respectively. Lastly, we have increased the estimated annual number of respondents from 1,427 to 1,644.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.097 hours per response.

Respondents: Nurseries in California, Oregon, and Washington.

Estimated annual number of respondents: 1,644.

Estimated annual number of responses per respondent: 2.26.

Estimated annual number of responses: 3,717.

Estimated total annual burden on respondents: 4,076 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 19th day of September 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-23301 Filed 9-24-13; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet on November 5 and 6, 2013. The meeting will be held in Pittsburgh, PA, at the Westin Convention Center Pittsburgh. The purpose of this meeting is to present past grant projects the Council recommended to the public and those attending the Partners in Community Forestry Conference; finalize their annual accomplishment and recommendations report to the Secretary; address items related to the urban forestry 10-year action plan; finalize the 2015 Urban and Community Forestry grant categories and listen to local constituents urban forestry concerns.

DATES: The meeting will be held on November 5 and 6, 2013, from 1:00 p.m. to 5:00 p.m. each day or until Council business is completed.

ADDRESSES: The meeting on both days will be held at the Westin Convention Center Pittsburgh, 1000 Penn Ave., Pittsburgh, PA 15222.

Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff, National Urban and Community Forestry Advisory Council, 1400 Independence Ave. SW., MS-1151, Washington, DC 20250-1151. Comments may also be sent via email to nstremple@fs.fed.us, or via facsimile to 202-690-5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Visitors wishing to view these documents are encouraged to call ahead to facilitate entry into the USDA Forest Service temporary address: 1621 North Kent

Street, RPE, 9th Floor, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT:

Nancy Stremple, Executive Staff, National Urban and Community Forestry Advisory Council, 1400 Independence Ave. SW., MS-1151, Washington, DC 20250-1151, desk phone 202-205-7829, or cell phone 202-309-9873, email: nstremple@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Nancy Stremple to be placed on the meeting attendance list. Meeting attendees should check-in at the registration table on the second floor of the hotel. Conference staff will direct attendees to the meeting room location. Please contact the hotel directly for directions and parking information. The Westin Convention Center Pittsburgh number is 412 560-6331.

Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council Executive Staff (1400 Independence Ave. SW., MS-1151, Washington, DC 20250-1151, email: nstremple@fs.fed.us) before or after the meeting. Public input sessions will be provided at the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make a request in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 19, 2013.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2013-23395 Filed 9-24-13; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board****[B-83-2013]****Foreign-Trade Zone (FTZ) 138—
Columbus, Ohio; Notification of
Proposed Production Activity; Rolls
Royce Energy Systems, Inc. (Industrial
Gas Turbines, Power Generation
Turbines, and Generator Sets); Mount
Vernon, Ohio**

The Columbus Regional Airport Authority, grantee of FTZ 138, submitted a notification of proposed production activity to the FTZ Board on behalf of Rolls Royce Energy Systems, Inc. (RRES), located in Mount Vernon, Ohio. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 5, 2013.

The RRES facility is located within Site 25 of FTZ 138. The facility is used for the production of industrial gas turbines, power generation turbines, and generator sets. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt RRES from customs duty payments on the foreign status components used in export production. On its domestic sales, RRES would be able to choose the duty rates during customs entry procedures that apply to industrial gas turbines, power generation turbines, generator sets, and related parts (free, 2.4%, and 2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components sourced from abroad include: AC generators; industrial gas turbines; turbine bases; acoustic enclosures; gearboxes (transmissions); and combustion liners (duty rates—2.4%, 2.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 4, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ

Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482-1378.

Dated: September 18, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-23387 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****Order Denying Export Privileges**

In the Matter of: Iman Kazerani, 153 Orient Way, Rutherford, New Jersey 07070.

On January 30, 2013, in the U.S. District Court, District of New Jersey, Iman Kazerani ("Kazerani") was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) ("IEEPA"). Specifically, Kazerani was convicted of knowingly and willfully exporting and causing the exportation of laptop computers from the United States to Iran in violation of the embargo imposed upon that country by the United States, without having first obtained the required licenses or authorizations from the Office of Foreign Assets Control, United States Department of the Treasury. Kazerani was sentenced to three years probation, a \$10,000 criminal fine and an assessment of \$100.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations")¹ provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act ("EAA"), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730-774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401-2420 (2000)) ("EAA"). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the IEEPA (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Kazerani's conviction for violating the IEEPA, and have provided notice and an opportunity for Kazerani to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Kazerani. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Kazerani's export privileges under the Regulations for a period of five years from the date of Kazerani's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Kazerani had an interest at the time of his conviction.

*Accordingly, it is hereby
Ordered*

I. Until January 30, 2018, Iman Kazerani, with a last known address at: 153 Orient Way, Rutherford, New Jersey 07070, and when acting for or on behalf of Kazerani, his representatives, assigns, agents or employees (the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States

that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Kazerani by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 30, 2018.

VI. In accordance with Part 756 of the Regulations, Kazerani may file an

appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Kazerani. This Order shall be published in the **Federal Register**.

Issued this 19th day of September 2013.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2013-23306 Filed 9-24-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-601]

Tapered Roller Bearings from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: On August 30, 2013, the United States Court of International Trade ("CIT" or "Court") sustained the Department of Commerce's ("Department") final results of the second remand redetermination¹ relating to the twentieth administrative review of the antidumping duty order on tapered roller bearings from the People's Republic of China ("PRC"), in *Peer Bearing Company—Changshan v. United States*, Court No. 09-00052, Slip Op. 13-116 (CIT 2013) ("CPZ III"). Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final results and is amending its final results of the administrative review of the antidumping duty order on tapered roller bearings from the PRC covering the period of review ("POR") of June 1, 2006, through May 31, 2007, with respect to the weighted-average

¹ See *Final Results of Redetermination Pursuant to Court Remand*, Court No. 09-00052, Slip Op. 12-102, dated October 2, 2012 ("*CPZ II Remand Redetermination*").

dumping margin assigned to Peer Bearing Company—Changshan ("CPZ").

DATES: *Effective Date:* September 9, 2013.

FOR FURTHER INFORMATION CONTACT:

Brendan Quinn, Office 8, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5848.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to the publication of the *Final Results*² on January 22, 2009, CPZ filed a complaint with the CIT to challenge various aspects of the *Final Results*.

On January 28, 2011, in *Peer Bearing Company—Changshan v. United States*, 752 F. Supp. 2d 1353 (CIT 2011) ("*CPZ I*"), the Court remanded the *Final Results* and ordered that the Department: a) re-determine CPZ's margin using U.S. prices calculated in a manner that complies with the law, either by employing the constructed export price ("CEP") methodology using price and transaction data available on the administrative record or re-opening the record to obtain export price ("EP") information; and b) review, reconsider, and re-determine surrogate values ("SVs") for alloy steel wire rod, alloy steel bar, and scrap from the production of cages, used to calculate CPZ's factors of production.

In response to *CPZ I*, the Department issued the *Final Results of Redetermination Pursuant to Remand*, Court No. 09-00052, Slip Op. 11-11 (CIT 2011) on July 1, 2011 ("*CPZ I Remand Redetermination*"). In the *CPZ I Remand Redetermination*, the Department determined: 1) that CPZ's dumping margin should be calculated on an EP basis; 2) that CPZ was unresponsive to the Department's requests for EP information; and 3) to apply total adverse facts available ("AFA") to CPZ. As a result of the determination to apply total AFA to CPZ, the Department did not reach any determination regarding SV issues remanded by the Court in *CPZ I*.

On August 2, 2012, in *Peer Bearing Company—Changshan v. United States*, Court No. 09-00052, Slip Op. 12-102 (CIT 2012) ("*CPZ II*"), the Court remanded the *CPZ I Remand Redetermination* to the Department. In

² *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) ("*Final Results*").

CPZ II, the Court held that the Department acted unlawfully by using an adverse inference in re-determining CPZ's dumping margin, and acted unlawfully by failing to recalculate the SVs. The Court ordered the Department to: 1) Determine the U.S. price for CPZ's sales of subject merchandise according to a lawful method; and 2) review, reconsider, and re-determine the SVs.

In response to CPZ II, the Department issued the CPZ II Remand Redetermination on October 2, 2012. In the CPZ II Remand Redetermination, the Department: 1) Applied non-AFA by calculating CPZ's margin utilizing the CEP U.S. price methodology based on sales information available on the record of the underlying review; and 2) re-determined the SVs based on alternative SV information on the record.

On August 31, 2013, the Court sustained the CPZ II Remand Redetermination, holding that: 1) There was no error in the Department's decision to use the record CEP data instead of entered value data to determine the U.S. prices of CPZ's subject merchandise, as had been argued during the remand proceeding; and 2) the re-determined SVs comply with the remand order issued in CPZ I.³

Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's August 30, 2013, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's final results of the administrative review. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the most recently completed segment of this proceeding in which the respondent was included.

Amended Final Results

Because there is now a final court decision with respect to this case, the

Department is amending its *Final Results* with respect to CPZ's weighted-average dumping margin for the period June 1, 2006 through May 31, 2007. The revised weighted-average dumping margin is as follows:

TRBS FROM THE PRC	
Exporter	Weighted-average margin (percent)
Peer Bearing Company— Changshan (CPZ)	6.25

In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by CPZ during the POR.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: September 18, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013-23390 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-870]

Chlorinated Isocyanurates From Japan: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Jerry Huang at (202) 482-1394 or (202) 482-4047, respectively, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On August 29, 2013, the Department of Commerce (the "Department") received an antidumping duty ("AD") petition concerning imports of chlorinated isocyanurates ("chlorinated isos") from Japan, filed in proper form by Clearon Corp. and Occidental

Chemical Corporation ("Petitioners").¹ Petitioners are domestic producers of chlorinated isos. On September 4, 2013, Petitioners provided a supplement to the foreign market research report provided in the Petition.² The Department requested additional information and clarification of certain areas of the Petition on September 4, 2013 and September 5, 2013.³ Petitioners filed their response to these requests on September 9, 2013.⁴ Petitioners also submitted additional information regarding the foreign market research report on September 9, 2013.⁵ On September 10, 2013, Department officials held a telephone conference call with the source of the home market pricing information to confirm the information provided.⁶ Additionally, on September 10, 2013, Department officials held a telephone conference call with Petitioners regarding the Supplement to the AD/CVD Petitions.⁷ On September 10, 2013, Petitioners resubmitted Exhibit AD-26 of the Petition.⁸

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the "Act"), Petitioners allege that imports of chlorinated isos from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed this Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the initiation of the AD investigation that they are requesting. See the "Determination of

¹ See Petition for the Imposition of Antidumping Duties on Chlorinated Isocyanurates from Japan, dated August 29, 2013 ("Petition").

² See First Supplement to the AD Petition, dated September 4, 2013 ("First Supplement").

³ See Department's General Supplemental Questionnaire issued on September 4, 2013 and Department's AD/CVD Supplemental Questionnaire issued on September 5, 2013.

⁴ See Supplement to the AD/CVD Petitions, dated September 9, 2013 ("Supplement to the AD/CVD Petitions").

⁵ See Second Supplement to the AD Petition, dated September 9, 2013 ("Second Supplement").

⁶ See Memorandum to the File from Julia Hancock, dated September 11, 2013.

⁷ See Memorandum to the File from Jerry Huang, dated September 11, 2013.

⁸ See Amended Supplement to the AD Petition, dated September 10, 2013 ("Amended Supplement").

³ See CPZ III, Slip Op. 13-116 at 5-9.

Industry Support for the Petition” section below.

Period of Investigation

Because the Petition was filed on August 29, 2013, the period of investigation (“POI”) is July 1, 2012, through June 30, 2013.⁹

Scope of the Investigation

The product covered by this investigation is chlorinated isos from Japan. For a full description of the scope of the investigation, see the “Scope of the Investigation,” in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by October 8, 2013, 5:00 p.m. Eastern Standard Time, 20 calendar days from the signature date of this notice. All comments and submissions to the Department must be filed electronically using Import Administration’s Antidumping Countervailing Duty Centralized Electronic Service System (“IA ACCESS”).¹⁰ An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties

prior to the issuance of the preliminary determination. All comments must be filed on the record of the Japan AD investigation, as well as the concurrent PRC countervailing duty (“CVD”) investigation.

Comments on Product Characteristics for Antidumping Duty Questionnaire

The Department requests comments from interested parties regarding the appropriate physical characteristics of chlorinated isos to be reported in response to the Department’s AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to develop appropriate product-comparison criteria and to allow respondent to report the relevant costs of production, if necessary.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product-comparison criteria. We find that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe chlorinated isos, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, we must receive comments filed in accordance with the Department’s electronic filing requirements, available at 19 CFR 351.303, by October 8, 2013. Rebuttal comments must be received by October 14, 2013.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the

petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,¹¹ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹²

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product

¹¹ See section 771(10) of the Act.

¹² See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

⁹ See 19 CFR 351.204(b)(1).

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) for details of the Department’s electronic filing requirements, which went into effect on August 5, 2011. Information on using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that chlorinated isos, as defined in the scope of the investigation, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.¹³

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, Petitioners provided their production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.¹⁴ Petitioners estimated total 2012 production of the domestic like product using their own production data and knowledge of the industry.¹⁵ We have relied upon data Petitioners provided for purposes of measuring industry support.¹⁶

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioners have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.¹⁷ Based on information provided in the Petition, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.¹⁸ Accordingly, the Department determines that the Petition

¹³ See Antidumping Duty Investigation Initiation Checklist: Chlorinated Isocyanurates from Japan ("Initiation Checklist"), at Attachment II, Analysis of Industry Support for the Petitions Covering Chlorinated Isocyanurates from Japan and the People's Republic of China ("Attachment II"). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building.

¹⁴ See Volume I of the Petition, at 3–4 and Volume II of the Petition, at Exhibits GEN–9 and GEN–12.

¹⁵ *Id.*

¹⁶ See Initiation Checklist, at Attachment II.

¹⁷ *Id.*

¹⁸ *Id.*

was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.¹⁹

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the AD investigation that they are requesting the Department initiate.²⁰

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²¹

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in production, shipments, and capacity utilization; reduced employment-related variables; and decline in financial performance.²² We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²³

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of chlorinated isos from Japan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Initiation Checklist.

Export Price

Petitioners calculated export price ("EP") using competitive sales

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Volume I of the Petition, at 112–113 and Volume III of the Petition, at Exhibit AD–2.

²² See Volume I of the Petition, at 96–132, Volume II of the Petition, at Exhibits GEN–2 and GEN–9 through GEN–17, and Volume III of the Petition, at Exhibit AD–2.

²³ See Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Chlorinated Isocyanurates from Japan and the People's Republic of China.

information obtained in the market through customer negotiations, which are supported by affidavits.²⁴

Petitioners made adjustments for cost, insurance, and freight ("CIF") charges and import duties reported by the U.S. Census Bureau ("Census") to calculate the ex-factory price. The CIF and import duty charges were estimated to equal the difference between the landed cost value and customs value reported in Census statistics.²⁵

Petitioners also submitted import statistics to corroborate the transaction prices reported in the Petition. Petitioners based average unit value ("AUV") on import statistics compiled by Census for U.S. imports from Japan during the POI under subheading 2933.69.6015. Petitioners stated that because the AUV represents the free-on-board origin value of the imported merchandise, no adjustments were made to this value for purposes of comparing AUV data with ex-factory prices based on competitive sales data.²⁶

Normal Value

Pursuant to section 773(a)(1)(B)(i) of the Act, Petitioners based NV on prices in Japan for sales of chlorinated isos in various forms in 2013, which were obtained by an independent market research organization.²⁷ As these prices were offered in Japanese yen, Petitioners converted the prices to U.S. dollars so that U.S. price and NV were compared on the same basis.²⁸

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of chlorinated isos from

²⁴ See Volume II of the Petition, at Exhibit GEN–12, Volume III of the Petition, at Exhibit AD–3, and Supplement to the AD/CVD Petitions, at Exhibits AD–18–AD–20.

²⁵ See Volume I of the Petition, at 21, and Volume III of the Petition, at Exhibit AD–2.

²⁶ See Volume I of the Petition, at 19, and Volume III of the Petition, at Exhibit AD–2.

²⁷ See Volume III of the Petition, at Exhibit AD–4, First Supplement, Second Supplement, and Memorandum to the File from Julia Hancock and Jerry Huang, International Trade Compliance Analysts, AD/CVD Operations Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations Office 9, entitled "Telephone Call to Market Research Firm," dated September 11, 2013 ("Market Research Memo").

²⁸ See Supplement to the AD/CVD Petitions, at Exhibit AD–26. Petitioners also provided constructed value data and calculated margins based on a comparison between U.S. export prices and constructed value. See Volume I of the Petition, at 23–29, and Volume III of the Petition at Exhibits AD–5–AD–16, Supplement to the AD/CVD Petitions at 6–13 and Exhibits AD–21–AD–26, and Amended Supplement. Because Petitioners provided appropriate home market prices, we have relied on these prices as the basis for normal value, pursuant to section 773(a)(1) of the Act, for purposes of initiation.

Japan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NVs, in accordance with section 773(a)(1) of the Act, the estimated dumping margins for chlorinated isos from Japan range from 129.4 percent to 218.1 percent.²⁹

Initiation of Antidumping Investigation

Based upon the examination of the Petition on chlorinated isos from Japan, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating the AD investigation to determine whether imports of chlorinated isos from Japan are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The Petition names eleven companies as producers of chlorinated isos from Japan.³⁰ Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of known exporters or producers for this investigation is large, the Department may select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports of chlorinated isos from Japan under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.³¹

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), the Government of Japan was provided access to a copy of the public version of the Petition via IA ACCESS.

²⁹ See Amended Supplement, at Exhibit AD-26.

³⁰ See Volume II of the Petition, at Exhibit AD-1.

³¹ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations*, 76 FR 23281, 23285 (April 26, 2011).

To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than October 15, 2013, whether there is a reasonable indication that imports of chlorinated isos from Japan are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at

<http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in this investigation.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³² Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.³³ The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 18, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid ("TCCA") (Cl₃(NCO)₃), (2) sodium dichloroisocyanurate (dihydrate) (NaCl₂(NCO)₃ X 2H₂O), and (3) sodium

³² See section 782(b) of the Act.

³³ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("Final Rule"); see also the frequently asked questions regarding the *Final Rule*, available at http://ia.ita.doc.gov/tei/notices/factual_info_final_rule_FAQ_07172013.pdf.

dichloroisocyanurate (anhydrous) ($\text{NaCl}_2(\text{NCO})_3$). Chlorinated isocyanurates are available in powder, granular and solid (*e.g.*, tablet or stick) forms.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. The tariff classifications 3808.50.4000, 3808.94.5000 and 3808.99.9500 cover disinfectants that include chlorinated isocyanurates. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2013–23389 Filed 9–24–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–991]

Chlorinated Isocyanurates From the People’s Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Paul Walker, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202.482.2312 or 202.482.0413, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On August 29, 2013, the Department of Commerce (the “Department”) received a countervailing duty (“CVD”) petition concerning imports of chlorinated isocyanurates (“chlorinated isos”) from the People’s Republic of China (“PRC”), filed in proper form by Clearon Corp. and Occidental Chemical Corporation (“Petitioners”), domestic

producers of chlorinated isos. The CVD petition was accompanied by an antidumping duty (“AD”) petition concerning imports of chlorinated isos from Japan.¹ On September 4 and 5, 2013, the Department issued additional requests for information and clarification of certain areas of the Petition. Based on the Department’s requests, Petitioners timely filed additional information pertaining to the Petition on September 9, 2013.²

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the “Act”), Petitioners allege that producers/exporters of chlorinated isos in the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioners filed this Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department to initiate (*see* “Determination of Industry Support for the Petition” below).

Period of Investigation

The period of investigation (“POI”) is 1/1/12–12/31/12, in accordance with 19 CFR 351.204(b)(2).

Scope of the Investigation

The products covered by this investigation are chlorinated isos from the PRC. For a full description of the scope of the investigation, please see the “Scope of Investigation” in the appendix to this notice.

Comments on the Scope of the Investigation

During our review of the Petition, we solicited information from Petitioners to ensure that the proposed scope language is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department’s regulations,³ we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested

parties to submit such comments by October 8, 2013, which is 20 calendar days from the signature date of this notice. All comments must be filed on the record of the PRC CVD investigation, as well as the concurrent Japan AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). An electronically filed document must be received successfully in its entirety by the Department’s electronic records system, IA ACCESS, by the time and date set by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the Import Administration’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline established by the Department.⁴

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the government of the PRC (hereinafter, the “GOC”) with respect to the Petition on September 12, 2013.⁵

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product,

⁴ Information on help using IA ACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

⁵ *See* “Countervailing Duty Petition on Chlorinated Isocyanurates from the People’s Republic of China: Consultations with the Government of the People’s Republic of China,” dated September 12, 2013.

¹ *See* “Petition for the Imposition of Antidumping Duties on Chlorinated Isocyanurates from Japan and Countervailing Duties on Chlorinated Isocyanurates from the People’s Republic of China, dated August 29, 2013 (hereafter referred to as the “Petition”).

² *See* Petitioners’ September 9, 2013 response.

³ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,⁶ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.⁷

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that chlorinated isos, as defined in the scope of the investigation, constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.⁸

⁶ See section 771(10) of the Act

⁷ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

⁸ See Countervailing Duty Investigation Initiation Checklist: Chlorinated Isocyanurates from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Chlorinated Isocyanurates

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish industry support, Petitioners provided their production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.⁹ Petitioners estimated total 2012 production of the domestic like product using their own production data and knowledge of the industry.¹⁰ We have relied upon data Petitioners provided for purposes of measuring industry support.¹¹

Based on information provided in the Petition, supplemental submission, and other information readily available to the Department, we determine that Petitioners have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.¹² Based on information provided in the Petition, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.¹³

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate.¹⁴

from Japan and the People’s Republic of China (“Attachment II”). This checklist is dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

⁹ See Volume I of the Petition, at 3–4, and Volume II of the Petition, at Exhibits GEN–9 and GEN–12.

¹⁰ *Id.*

¹¹ See Initiation Checklist, at Attachment II.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.¹⁵

Petitioners contend that the industry’s injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; decline in production, shipments, and capacity utilization; reduced employment-related variables; and decline in financial performance.¹⁶ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.¹⁷

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a CVD petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the Petition on chlorinated isos from the PRC and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are

¹⁵ See Volume I of the Petition, at 112–113 and Volume IV of the Petition, at Exhibit CVD–86.

¹⁶ See Volume I of the Petition, at 96–132, Volume II of the Petition, at Exhibits GEN–2 and GEN–9 through GEN–17, and Volume IV of the Petition, at Exhibit CVD–86.

¹⁷ See Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Chlorinated Isocyanurates from Japan and the People’s Republic of China.

initiating a CVD investigation to determine whether producers/exporters of chlorinated isos in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see the CVD Initiation Checklist which accompanies this notice.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation of 29 alleged programs. For the other nine programs alleged by Petitioners, we have determined that the requirements for initiation have not been met. For a full discussion of the basis for our decision to initiate or not initiate on each program, see the CVD Initiation Checklist.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POI (*i.e.*, calendar year 2012) under the following Harmonized Tariff Schedule of the United States numbers: 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of release of this data. Comments must be filed electronically using 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 time by the date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at <http://ia.ita.doc.gov/apo>.

Distribution of Copies of the CVD Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of subsidized chlorinated isos from the PRC materially injure, or threaten material injury to, a U.S. industry.¹⁸ A negative ITC determination will result in the investigation being terminated.¹⁹ Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)-(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct

factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.²⁰ Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD or CVD investigations or proceedings initiated on or after August 16, 2013, including this investigation.²¹ The formats for the revised certifications are provided at the end of the *Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: September 18, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Scope of the Investigation

The products covered by this investigation are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid ("TCCA") (Cl₃(NCO)₃), (2) sodium dichloroisocyanurate (dihydrate) (NaCl₂(NCO)₃ X 2H₂O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl₂(NCO)₃). Chlorinated isocyanurates are available in powder, granular and solid (*e.g.*, tablet or stick) forms.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The tariff classification

²⁰ See section 782(b) of the Act

²¹ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("Final Rule").

¹⁸ See section 703(a)(2) of the Act.

¹⁹ See section 703(a)(1) of the Act.

2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. The tariff classifications 3808.50.4000, 3808.94.5000 and 3808.99.9500 cover disinfectants that include chlorinated isocyanurates. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2013-23388 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 13-00001]

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review to Emporia Trading LLC, Application No. 13-00001.

SUMMARY: The Export Trading Company Affairs (“ETCA”) unit, Office of Competition and Economic Analysis, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (“Certificate”). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2013). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis (“OCEA”) is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.6, interested parties may submit written comments to the Secretary on the application within twenty days after

the date the notice is published in the **Federal Register**.

Request for Public Comments: Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked “privileged” or “confidential business information” will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmitted by Email at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as “Export Trade Certificate of Review, application number 12-00001.” A summary of the application follows.

Summary of the Application

Applicant: Emporia Trading LLC, 6408 Los Robles El Paso TX, 79912.

Application No.: 13-00001.

Date Deemed Submitted: September 17, 2013.

Members (in addition to applicant): Robert T “Terry” Smith, Sr. and Robert “Bobby” Smith, Jr. are individual members who seek to be covered by and receive the protections of the Certificate. Terry Smith’s principal address is the same as the applicant’s and Bobby Smith’s address is 2200 Panther Trail, #503 Austin, TX 78704. Both members are affiliated with the applicant through common ownership.

Emporia Trading LLC seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

Export Trade

Products: Manufactured Products [NAICS 31-33]

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited

to: patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products): Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs’ requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (e.g., Export Enhancement and Market Promotion programs, invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, Emporia Trading LLC and its individual members (collectively “Emporia”) may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in

the Export Markets and distribute such information to clients;

3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products and Services, and/or Technology Rights to Export Markets;

4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products and Services and/or Technology Rights;

6. Allocate export orders among Suppliers;

7. Establish the price of Products and Services and/or Technology Rights for sales and/or licensing in Export Markets; and

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

9. Emporia may exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by Emporia with its distributors in Export Markets.

Definition

"Supplier" means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: September 17, 2013.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013-23297 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Meeting

AGENCY: International Trade Administration (ITA), Commerce (DOC).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Wednesday, October 16, 2013, at 9:00 a.m. Eastern Daylight Time (EDT). The public session is from 3:00 p.m.–4:00 p.m.

ADDRESSES: The meeting will be held in Room 6029, U.S. Department of

Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Kincaid, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1706; Fax: 202–482–5665; email: david.kincaid@trade.gov).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the October 16, 2013 CINTAC meeting is as follows:

Closed Session (9:00 a.m.–3:00 p.m.)

1. Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. (10)(a)(1) and 10(a)(3).

Public Session (3:00 p.m.–4:00 p.m.)

1. International Trade Administration's Civil Nuclear Trade Initiative Update

2. Civil Nuclear Trade Promotion Activities Discussion

3. Public comment period
The meeting will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. David Kincaid at the contact information below by 5:00 p.m. EDT on Friday, October 11, 2013 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to

two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Kincaid and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, October 11, 2013. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, October 11, 2013. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: September 17, 2013.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2013-23261 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC883

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of four permit applications and one permit modification request for scientific research and enhancement.

SUMMARY: Notice is hereby given that NMFS has received four scientific research and enhancement permit applications and one permit

modification request relating to anadromous species listed under the Endangered Species Act (ESA). The proposed research activities are intended to increase knowledge of the species and to help guide management and conservation efforts. The applications and related documents may be viewed online at: https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm. These documents are also available upon written request or by appointment by contacting NMFS by phone (916) 930-3706 or fax (916) 930-3629.

DATES: Written comments on the permit applications or modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5-p.m. Pacific standard time on October 25, 2013.

ADDRESSES: Written comments on the applications or modification request should be submitted to the Protected Resources Division, NMFS, 650 Capitol Mall, Room 5-100, Sacramento, CA 95814. Comments may also be submitted via fax to (916) 930-3629 or by email to FRNpermits.sac@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Amanda Cranford, Sacramento, CA (ph.: 916-930-3706, email: Amanda.Cranford@noaa.gov).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened California Central Valley steelhead (*Oncorhynchus mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), and the threatened southern distinct population segment of North American (SDPS) green sturgeon (*Acipenser medirostris*).

Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531-1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222-226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the permit applications listed in this notice should set out the specific reasons why

a hearing on the application(s) would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1415

The U.S. Fish and Wildlife Services' (USFWS) Red Bluff Fish and Wildlife Office is requesting a 5-year scientific research and enhancement permit for take of adult and juvenile Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and California Central Valley steelhead; and eggs, larvae, juvenile and adult SDPS green sturgeon associated with monitoring and research activities conducted at multiple sites within the Sacramento River basin, Central Valley, CA. Receipt of permit application 1415 was previous noticed in the **Federal Register** (74 FR 7879) with a 30 day comment period from February 20, 2009 to March 23, 2009. No comments were received for this application, however due to substantial changes to the sampling locations and study descriptions NMFS is publishing the revised notice for public comment.

The overall purpose of the projects is to provide monitoring data for various evaluations, including restoration actions, stream flow assessments, management actions, and life-history investigations. Streams targeted for research and monitoring include Battle Creek, Clear Creek, and the mainstem of the upper Sacramento River (i.e., upper river and surrounding watersheds). Take resulting from the proposed research and monitoring activities will involve observations (snorkel surveys, redd counts and escapement/stream surveys) or capture (by trawl, seine, fyke-net trap, benthic D-net, substrate samplers, hook and line, backpack electrofishing, weir trap, trammel or gill net, rotary screw trap, egg mats, or by dip net), handling (fin clipping, tissue sampling, coded-wire tag extraction, otolith extraction), marking (Bismark Brown Y stain), tagging (acoustic, radio or passive integrated transponder [PIT]), and release of fish in association with nine separate projects.

Permit 17761

The East Bay Municipal Utility District (EBMUD) is requesting a 5-year permit to conduct monitoring and research of anadromous and resident fishes in the Lower Mokelumne River. Permit 17761 will be a renewal of EBMUD's current Section 10(a)(1)(A) permit (1414-M1). The goals of the Lower Mokelumne River Fish

Monitoring Program include measuring the success of the Lower Mokelumne River Restoration Program and determining if the modifications of the program are appropriate for conserving fish and wildlife resources in the Lower Mokelumne River. The Program began in 1998 and will continue indefinitely.

Adult and juvenile California Central Valley steelhead will be captured (using boat and backpack electrofishing, rotary screw traps, fyke traps, beach seines and smolt bypass traps), sedated, weighed, measured, and checked for marks or tags. A subsample may be marked, tagged, and/or sampled for stomach contents. All captured fish will then be allowed to recover in well oxygenated water before release back into the Mokelumne River.

Permit 18064

The USFWS' Sacramento Fish and Wildlife Office is requesting a 2-year scientific research and enhancement permit to deploy two upstream migrant traps in the Gorrill Dam fish ladders on Butte Creek in Butte County, California. Upstream migrant traps will be operated one day each week between March 1-June 30 and August 1-November 30 annually. As traps are operated, adult fall-run and Central Valley spring-run Chinook salmon will be implanted with acoustic transmitters and released back to the Gorrill Dam fish ladder. Other fish species will be collected on an incidental basis. If California Central Valley steelhead are captured, fin clips may be taken to be used in genetic studies.

Trapping data will be archived in a database where they can be easily analyzed and retrieved, and data summaries and analyses will be presented in an annual report. After data collection, the principal investigators will develop a report recommending flows and/or restoration actions to reduce mortality of adult spring-run Chinook salmon in Butte Creek associated with blockage at the Lahar formation downstream of Durham Mutual Dam.

The proposed monitoring project does not include activities designed to intentionally result in the death of listed taxa. Sampling will be done one day per week, with the trap installed at 9 a.m. and pulled at 4 p.m. The traps will be checked every hour during sampling to make sure there are no more than ten fish in the trap at a time. USFWS will tag up to five fall-run Chinook salmon and ten Central Valley spring-run Chinook salmon per week, so that tagged fish will be released throughout the upstream migration period. This will ensure that tagged fish encounter

the Lahar structure at a range of stream flows.

Permit 18181

The California Department of Fish and Wildlife (CDFW), Region II, is requesting a 5-year research and enhancement permit in order to determine the number of salmon entering the Colusa Basin Drainage Canal (CBDC) and identify points of entry into the CBDC system. In the spring of 2013, a large number of adult Chinook salmon were found trapped behind a water diversion of the CBDC system in the Sacramento National Wildlife Refuge (NWR) near Willows, California. CDFW personnel verified that a mix of Central Valley spring-run Chinook salmon and Sacramento River winter-run Chinook salmon were present. In total, 312 Chinook salmon were rescued from the stranding site. Many more were reported present in the area, however due to their location in the system and accessibility issues, it was not possible to rescue a number of them. With extremely low numbers of winter-run Chinook salmon returning to the Sacramento River in recent years, entrainment in the canals is likely having a substantial negative effect on the recovery.

A temporary trap will be installed within the CBDC upstream of points identified as potential entry points. The trapping site will be located approximately 14 miles upstream from the town of Knights Landing, California and will consist of a resistance board weir guiding fish into a fyke trap. The traps will be sampled continuously; 24 hours per day, 7 days per week. Once captured, all fish will be externally tagged with a floy tag identifying its capture. When feasible, biological data will be collected for all Chinook salmon captured and relocated (fork length, sex, physical condition, ad-clip status, and tissue samples for genetic analysis). When large numbers of Chinook salmon are encountered, biological data will be collected on a systematic subsample of fish.

To answer the question of where adult salmon enter the Colusa Basin and, once in, where they wind up in the labyrinth of canals and waterways and to gather information on movement timing and cues, CDFW propose using state of the art Pop-up Satellite Transmitting Tags (PSAT) to record and upload fine scale movements of adult salmon. Up to 40 adult Chinook salmon will be outfitted with a pop-up satellite tag and harness. Up to 40 acoustic tags may also be available for this project from other ongoing studies. Detailed information will be gathered pertaining to trapping

conditions; number, size and species of fish captured; type of tag and tag number received by individuals; and fish transport/release conditions.

Modification Request Received

Permit 14808-M1

Permit 14808 was issued to CDFW's Region II on September 26, 2012 for take of adult and juvenile California Central Valley steelhead; smolt and juvenile Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon; and juvenile SDPS green sturgeon associated with research activities on the Sacramento River, in Yolo County, California.

For the 2012–2013 sampling season, exceptionally high flows, coupled with excessive debris in the Sacramento River contributed to higher catches than were anticipated under Permit 14808. Given last year's high catch numbers combined with preliminary data suggesting that Sacramento River winter-run Chinook salmon escapement estimates are higher than previous years, CDFW is requesting to modify Permit 14808 to accommodate the higher levels of juvenile winter-run Chinook salmon emigration expected to occur.

Sampling will occur through the use of paired 8-foot rotary screw traps (RSTs) at one site along the upper Sacramento River. The site, river mile (RM) 88.5, located near the town of Knights Landing will be sampled beginning in October and continue through June of the following year. Traps will be fished continuously and checked once every 24 hours unless conditions such as high flows or excessive debris warrants more frequent sampling.

Captured salmonids will be sedated, handled (including measurements), allowed to recover in fresh aerated water and released back into the Sacramento River downstream of the trapping location. The exception will be up to 20 adipose fin-clipped (hatchery) Chinook salmon that will be sacrificed per day for coded wire tag extraction and analysis. Additionally, a subsample of non ESA-listed fall-run Chinook salmon will be marked (Bismark Brown Y stain) and released upstream of the trapping location for trap efficiency testing. Any green sturgeon encountered during sampling will be recorded and immediately released downstream of the trapping location.

Dated: September 19, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–23213 Filed 9–24–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Secrecy and License to Export.

Form Number(s): None.

Agency Approval Number: 0651–0034.

Type of Request: Revision of a currently approved collection.

Burden: 1,431 hours annually.

Number of Respondents: 2,294 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public between 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare the appropriate petition, and submit the petition to the USPTO, depending on the complexity of the situation.

Needs and Uses: This information is required by 35 U.S.C. 181–188 and administered by the USPTO through 37 CFR 5.1–5.22 and 1.17. This collection includes the information needed by the USPTO to review the various types of petitions regarding secrecy orders and to issue or revoke foreign filing licenses. Responses to this information collection is necessary to obtain a permit to disclose, modify or rescind a secrecy order; to obtain general or group permits; to obtain foreign filing licenses, including retroactive foreign filing licenses; or to change the scope of a license.

Affected Public: Businesses or other for-profits or not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: Nicholas_A_Fraser@omb.eop.gov.

Once submitted, the request will be publicly available in electronic format

through the Information Collection Review paper page at www.reginfo.gov.

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov*. Include "0651-0022 copy request" in the subject line of the message.

- *Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.*

Written comments and recommendations for the proposed information collection should be sent on or before October 25, 2013 to Nicholas A. Fraser, OMB Desk Officer, via email to Nicholas_A_Fraser@omb.eop.gov or by fax to 202-395-5167, marked to the attention of Nicholas A. Fraser.

Dated: September 20, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013-23294 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO-P-2013-0048]

Grant of Interim Extension of the Term of U.S. Patent No. 5,624,923; Lixivaptan

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,624,923.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272-7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313-1450; by fax marked to her attention at (571) 273-7755; or by email to Mary.Till@uspto.gov.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to

extend beyond the expiration date of the patent.

On July 11, 2013, Cardiokine Biopharma, LLC timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 5,624,923. The patent claims the human drug product lixivaptan. The application indicates that a New Drug Application, 203,009, for the drug product lixivaptan was filed on December 29, 2011, and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period has continued beyond the original expiration date of the patent, July 29, 2013, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,624,923 is granted for a period of one year from the original expiration date of the patent.

Dated: September 20, 2013.

Andrew Hirshfeld,

Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office.

[FR Doc. 2013-23325 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO-P-2013-0047]

Grant of Interim Extension of the Term of U.S. Patent No. 5,454,779; ResQPump®/ResQPOD® ITD

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued a second order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,454,779.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272-7755; by mail marked to her attention and addressed to the Commissioner for

Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313-1450; by fax marked to her attention at (571) 273-7755; or by email to Mary.Till@uspto.gov.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On August 21, 2013, the Regents of the University of California timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 5,454,779. The patent claims the medical device, ResQPump® in connection with the ResQPOD® ITD. The application indicates that a Premarket Approval Application, PMA No. P110024, for the medical device has been filed, and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent, October 3, 2013, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,454,779 is granted for a period of one year from the extended expiration date of the patent.

Dated: September 20, 2013.

Andrew Hirshfeld,

Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office.

[FR Doc. 2013-23327 Filed 9-24-13; 8:45 am]

BILLING CODE 3510-16-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, October 18, 2013

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, Enforcement Matters, and Examinations. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202-418-5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013-23417 Filed 9-23-13; 11:15 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, October 4, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates or locations of this or any future meetings change, an announcement of the change, along with the new time, and place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202-418-5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013-23415 Filed 9-23-13; 11:15 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, October 11, 2013

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, Enforcement Matters, and Examinations. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and

place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202-418-5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013-23416 Filed 9-23-13; 11:15 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Friday, October 25, 2013

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates, or locations of this or any future meetings change, an announcement of the change, along with the new time, date and place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202-418-5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013-23418 Filed 9-23-13; 11:15 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0012; Docket 2013-0077; Sequence 11]

Information Collection; OMB Control No. 9000-0012, Termination Settlement Proposal Forms—FAR (Standard Forms 1435 Through 1440)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension, with changes, to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the

Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440), as prescribed at FAR subpart 49.6, Contract Termination Forms and Formats.

DATES: Submit comments on or before November 25, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000-0012 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000-0012" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0012". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0012" on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001. ATTN: Hada Flowers/IC 9000-0012.

Instructions: Please submit comments only and cite Information Collection 9000-0012, in all correspondence related to this collection. Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Procurement Analyst, Federal Acquisition Policy Division, at (202) 501-1448 or Curtis.glover@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position per FAR subpart 49.6—Contract Termination Forms and Formats. Submission of the information assures that a contractor will be fairly

reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Based on data retrieved from the Federal Procurement Data System (FPDS) there was an estimated average of 10,152 contracts to 5,949 unique vendors that would have been subject to the termination settlement proposal forms (Standard Forms 1435 through 1440). This data was based on the estimate average number of terminations for convenience (complete or partial) for Fiscal Years, 2010, 2011, and 2012. In consultation with subject matter experts, it was determined that the 5,949 unique vendors was a sufficient baseline for estimating the number of respondents. It is therefore estimated that approximately 5,949 respondents would need to comply with this information collection. The estimated number of responses per respondent for this information collection is based on an estimated average number of respondents divided by the estimated average number of unique vendors (1.7). Additionally, in discussion with subject matter experts, it was estimated that the previously approved burden hours per response of 2.4 hours is still relevant for this information collection. No public comments were received in prior years that have challenged the validity of the Government's estimate. The revisions to this information collection reflect a significant upward adjustment from what was published in the **Federal Register** at 75 FR 63831 on October 18, 2010. This increase is based on a revision to the estimated number of respondents that would be subject to this information collection.

Respondents: 5,949.

Responses Per Respondent: 1.7.

Total Responses: 10,113.

Hours Per Response: 2.4.

Total Burden Hours: 24,271.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405-0001, telephone (202) 501-4755. Please cite OMB Control No. 9000-0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: September 17, 2013.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Governmentwide Policy, Office of Acquisition Policy.

[FR Doc. 2013-23308 Filed 9-24-13; 8:45 am]

BILLING CODE 6820-24-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA-2013-0033]

Proposed Collection; Comment Request

AGENCY: Assistant Secretary of the Army for Financial Management & Comptroller, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Assistant Secretary of the Army for Financial Management & Comptroller announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 25, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive,

East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the ASA (FM&C), Attn: Mr. Roger A. Pillar, 200 Stovall St., Rm: 1S49, Alexandria, VA 22314, or call Mr. Roger A. Pillar, GFEBS Functional Director at 703-545-8855.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Supplier Self-Services (SUS); OMB Control Number 0702-TBD.

Needs and Uses: The information collection requirement via SUS is necessary to reduce the amount and complexity of required input by vendors that manually enter invoice data into Wide Area Workflow (WAWF) (not those utilizing Electronic Data Interchange (EDI)). By pre-populating fields with accurate and up-to-date contract information, vendors are required to input significantly less data. Additionally, SUS simultaneously performs a front-end validation of submitted data, thus ensuring less manual intervention and fewer interest penalties incurred by the government.

Affected Public: Businesses (Federal Vendors).

Annual Burden Hours: 640.

Number of Respondents: 533.

Responses per Respondent: 12.

Average Burden per Response: 6 minutes.

Frequency: On occasion.

SUS leverages a DoD portal developed by WAWF known as "OneStop" that facilitates WAWF's interaction with ERPs. Respondents are vendors that continue to utilize WAWF as the mandated single point of entry and for viewing historical records, but are routed seamlessly to the SUS module for invoice data entry referencing the ERP contract data.

Dated: September 20, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013-23331 Filed 9-24-13; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF DEFENSE**Department of the Army****Information on Surplus Land at a Military Installation Designated for Disposal: Ernest Veuve Hall USARC/AMSA 75, T-25, Fort Missoula, Montana****AGENCY:** Department of the Army, DoD.**ACTION:** Notice.

SUMMARY: This amended notice provides information on withdrawal of surplus property at the Ernest Veuve Hall USARC/AMSA 75, T-25, Fort Missoula, Montana. This notice amends the Notice published in the **Federal Register** on May 9, 2006 (71 FR 26930).

DATES: Effective September 10, 2013

FOR FURTHER INFORMATION CONTACT: Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, Base Realignment and Closure (BRAC) Division, Attn: DAIM-BD, 600 Army Pentagon, Washington DC 20310-0600, (703) 545-1318. For information regarding the specific property listed below, contact the Army BRAC Division at the mailing address above or at ArmyBRAC2005@hqda.army.mil.

SUPPLEMENTARY INFORMATION: In 2005, the Ernest Veuve Hall USARC and AMSA75 were designated for closure under the authority of the Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, as amended. On May 9, 2006, the Department of Army published a Notice in the **Federal Register** (71 FR 26930) that property at this installation was declared surplus to the needs of the Federal Government. Property previously reported as surplus is now required by the Federal Government for United States Forest Service operations and National Guard Bureau activities.

Surplus Property List:

Deletion: Ernest Veuve Hall USARC/AMSA 75, T-25, Fort Missoula.

Authority: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510, as amended.

Dated: August 28, 2013.

Paul D. Cramer,

Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships).

[FR Doc. 2013-23332 Filed 9-24-13; 8:45 am]

BILLING CODE 3710-08-P**DEPARTMENT OF ENERGY****Improving Performance of Federal Permitting and Review of Infrastructure Projects**

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Extension of comment period.

SUMMARY: On August 29, 2013, the U.S. Department of Energy (DOE) published a Request for Information seeking information on a draft Integrated, Interagency Pre-Application (IIP) Process for significant onshore electric transmission projects requiring Federal authorizations. This notice announces an extension of the public comment period for submitting comments regarding the IIP Process.

DATES: The comment period for the request for information seeking information on a draft IIP Process published August 29, 2013 (78 FR 53436) is extended to October 31, 2013.

ADDRESSES: Comments should be addressed to: Julie A. Smith or Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Because of delays in handling conventional mail, it is recommended that documents be transmitted by electronic mail to juliea.smith@hq.doe.gov or christopher.lawrence@hq.doe.gov, or by facsimile to 202-586-7031.

FOR FURTHER INFORMATION CONTACT: Julie A. Smith at 202-586-7668, or by email to juliea.smith@hq.doe.gov; or Christopher Lawrence at 202-586-7680, or by email to christopher.lawrence@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On August 29, 2013, the DOE's Office of Electricity Delivery and Energy Reliability (OE), in collaboration with the Member Agencies of the Steering Committee created under Executive Order 13604 of March 22, 2012, *Improving Performance of Federal Permitting and Review of Infrastructure Projects*, published a Request for Information (RFI) in the **Federal Register** (78 FR 53436) seeking information on a draft IIP Process for significant onshore electric transmission projects requiring Federal authorizations.

This RFI seeks public input on a draft IIP Process intended to improve interagency and intergovernmental coordination focused on ensuring that proponents of transmission projects develop and submit accurate and

complete information early in the project planning process to facilitate efficient and timely environmental reviews and agency decisions.

Comments on the draft IIP Process were originally due on September 30, 2013, but several interested parties requested an extension of the 30-day comment period given the complexity of the issues, the importance of the draft IIP Process for future electric transmission projects, and the need to engage all stakeholders. As a result, OE is extending the comment period until October 31, 2013.

Issued in Washington, DC, September 20, 2013.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2013-23313 Filed 9-24-13; 8:45 a.m.]

BILLING CODE 6450-01-P**DEPARTMENT OF EDUCATION****Annual Notice of Interest Rates of Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program on or After July 1, 2013**

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.268.

DATES: This notice is effective September 25, 2013.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program on or after July 1, 2013, through June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, 830 First Street NE., room 114I1, Washington, DC 20202. Telephone: (202) 377-3681 or by email: ian.foss@ed.gov.

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

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**.

SUPPLEMENTARY INFORMATION: Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)), provides formulas for determining the interest rates charged to borrowers for loans made under the

Direct Loan Program including: Federal Direct Subsidized Stafford Loans (Direct Subsidized Loans); Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans); Federal Direct PLUS Loans (Direct PLUS Loans); and Federal Direct Consolidation Loans (Direct Consolidation Loans).

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans first disbursed on or after July 1,

2013, have a fixed interest rate that is calculated based on the high yield of the 10-year Treasury notes auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage. Therefore, while the interest rate determination for new loans will be different from year to year, such loans will have a fixed interest rate for the life of the loan. In each case, the calculated

rate is capped by a maximum interest rate.

The following chart contains specific information on the calculation of the interest rates for Direct Loans first disbursed on or after July 1, 2013, and through June 30, 2014. We publish a separate notice containing the interest rates for Direct Loans that were made in prior years.

FIXED-RATE DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 7/1/2013 AND THROUGH 6/30/2014

Loan type	Student grade level	Cohort		Index rate	Margin (percent)	2013–2014 Fixed rate (percent)	Max. rate (percent)
		First disbursed on/after	First disbursed before	10-Year treasury note			
Subsidized	Undergraduates	7/1/2013	7/1/2014	1.81	2.05	3.86	8.25
Unsubsidized	Undergraduates	7/1/2013	7/1/2014	1.81	2.05	3.86	8.25
Unsubsidized	Graduate/Professional Students.	7/1/2013	7/1/2014	1.81	3.60	5.41	9.50
PLUS	Parents of Dependent Undergraduates.	7/1/2013	7/1/2014	1.81	4.60	6.41	10.50
PLUS	Graduate/Professional Students.	7/1/2013	7/1/2014	1.81	4.60	6.41	10.50

If an application for a Direct Consolidation Loan is received by the Department on or after July 1, 2013, the interest rate on that loan is the weighted average of the consolidated loans, rounded up to the nearest higher 1/8 of 1 percent. Such Direct Consolidation Loans do not have an interest rate cap.

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.

Program Authority: 20 U.S.C. 1087 et seq.
Dated: September 20, 2013.

James W. Runcie,
Chief Operating Officer, Federal Student Aid.
[FR Doc. 2013–23362 Filed 9–24–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 16, 2013, 8:00 a.m.–5:00 p.m.; Thursday, October 17, 2013, 8:00 a.m.–12:15 p.m.

ADDRESSES: Deer Creek Lodge and Conference Center, P.O. Box 125, 22300 State Park Road 20, Mt. Sterling, OH 43143.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–7711.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics:

Wednesday, October 16, 2013

- EM Program Update
- EM SSAB Chairs’ Round Robin: Topics, Achievements, and Accomplishments
- EM Headquarters Budget Update
- EM Headquarters Waste Disposition Strategies
- Public Comment Period

Thursday October 17, 2013

- DOE Headquarters News and Views
- Educational Session: Life after EM Mission is Complete

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Catherine Alexander at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, Catherine Alexander, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact Catherine Alexander. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly

conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Catherine Alexander at the address or phone number listed above. Minutes will also be available at the following Web site: <http://www.em.doe.gov/stakepages/ssabchairs.aspx>.

Issued at Washington, DC on September 20, 2013.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2013-23329 Filed 9-24-13; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice sets forth the schedule and summary agenda for a conference call of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The purpose of this conference call is to discuss PCAST's Cyber-security report.

DATES: The public conference call will be held on Monday, October 7, 2013, from 4:00 p.m. to 4:30 p.m., (ET). To receive the call-in information, attendees should register for the conference call on the PCAST Web site, <http://www.whitehouse.gov/ostp/pcast> no later than 12:00 p.m. (ET) on Friday, October 4, 2013.

FOR FURTHER INFORMATION CONTACT: Information regarding the call agenda, time, and how to register for the call is available on the PCAST Web site at: <http://whitehouse.gov/ostp/pcast>. Questions about the conference call should be directed to Ms. Marjory Blumenthal, PCAST Executive Director, by email at: mblumenthal@ostp.eop.gov, (202) 456-4444.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at

<http://www.whitehouse.gov/ostp/pcast>. PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to hold a conference call in open session on October 7, 2013, from 4:00 p.m. to 4:30 p.m. (ET)

During the conference call, PCAST will discuss its Cyber-security report. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: <http://whitehouse.gov/ostp/pcast>.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on October 7, 2013, at a time specified in the meeting agenda posted on the PCAST Web site at <http://whitehouse.gov/ostp/pcast>. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at: <http://www.whitehouse.gov/ostp/pcast>, no later than 12:00 p.m. (ET) on Wednesday, October 2, 2013. Phone or email reservations to be considered for the public speaker list will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 10 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee as described below.

Written Comments: Although written comments are accepted until the date of

the meeting, written comments should be submitted to PCAST no later than 12:00 p.m. (ET) on Friday, October 4, 2013, so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at <http://whitehouse.gov/ostp/pcast> in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Issued in Washington, DC, on September 19, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013-23336 Filed 9-24-13; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2865-003
Applicants: TransCanada Energy Sales Ltd.

Description: TransCanada Energy Sales Market Based Rate Tariff to be effective 9/18/2013.

Filed Date: 9/18/13
Accession Number: 20130918-5042
Comments Due: 5 p.m. ET 10/9/13
Docket Numbers: ER10-2870-003
Applicants: TransCanada Power Marketing Ltd.

Description: TransCanada Power Marketing Market Based Rate Tariff to be effective 9/18/2013.

Filed Date: 9/18/13
Accession Number: 20130918-5045
Comments Due: 5 p.m. ET 10/9/13

Docket Numbers: ER13-127-002
Applicants: Idaho Power Company
Description: Idaho Power Company submits Resubmitted OATT Order No. 1000 Second Regional Compliance Filing to be effective 10/1/2015.

Filed Date: 9/18/13
Accession Number: 20130918-5054
Comments Due: 5 p.m. ET 10/16/13

Docket Numbers: ER13-2395-000
Applicants: AEP Texas Central

Company
Description: TCC-LCRA Transmission Services IA Amend #6 to be effective 8/28/2013.

Filed Date: 9/17/13

Accession Number: 20130917-5082

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13-2396-000

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position #W1-116— First Revised Service Agreement No. 2946 to be effective 5/25/2011.

Filed Date: 9/17/13

Accession Number: 20130917-5088

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13-2397-000

Applicants: ISO New England Inc., New England Power Pool Participants Committee

Description: Reliability Commitment Mit. Rev. to Appendix A of MR1 to be effective 9/18/2013.

Filed Date: 9/17/13

Accession Number: 20130917-5103

Comments Due: 5 p.m. ET 10/8/13

Docket Numbers: ER13-2398-000

Applicants: Pacific Gas and Electric Company

Description: Western TFA for Department of Corrections and Rehabilitation (CDCR) to be effective 9/19/2013.

Filed Date: 9/18/13

Accession Number: 20130918-5008

Comments Due: 5 p.m. ET 10/9/13

Docket Numbers: ER13-2399-000

Applicants: MidAmerican Energy Company

Description: Transmission Interconnection Agreement—East River to be effective 9/1/2013.

Filed Date: 9/18/13

Accession Number: 20130918-5072

Comments Due: 5 p.m. ET 10/9/13

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13-55-000

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Application for Authorization to Issue Short- and Long-Term Debt, to Guaranty Obligations, and for Waivers of Old Dominion Electric Cooperative.

Filed Date: 9/17/13

Accession Number: 20130917-5114

Comments Due: 5 p.m. ET 10/8/13

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 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013-23345 Filed 9-24-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13-2386-000]

Lakeswind Power Partners, 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 Lakeswind Power Partners, 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 October 9, 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 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013-23347 Filed 9-24-13; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9398-3]

Agency Information Collection Activities; Proposed Renewal of Several Currently Approved Collections; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit requests to renew several currently approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICRs are identified in this document by their corresponding titles, EPA ICR numbers, OMB Control numbers, and related docket identification (ID) numbers. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection activities that are summarized in this document. The ICRs and accompanying material are available for public review and comment in the relevant dockets identified in this document for the ICR.

DATES: Comments must be received on or before November 25, 2013.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the corresponding ICR

as identified in this document, by one of the following methods:

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

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Scott Drewes, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 347-0107; fax number: (703) 305-5884; email address: drewes.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork

burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Submit your comments by the deadline identified under **DATES**.
6. Identify the docket ID number assigned to the ICR action in the subject line on the first page of your response. You may also provide the ICR title and related EPA and OMB numbers.

III. What do I need to know about PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

As used in the PRA context, burden is defined in 5 CFR 1320.3(b).

IV. Which ICRs are being renewed?

EPA is planning to submit a number of currently approved ICRs to OMB for review and approval under PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The supporting statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

A. Docket ID Number EPA-HQ-OPP-2013-0493

Title: Compliance Requirement for Child Resistant Packaging.

ICR number: 0616.11.

OMB control number: 2070-0052.

ICR status: The approval for this ICR is scheduled to expire on May 31, 2014.

Abstract: This information collection program is designed to provide EPA with assurances that the packaging of pesticide products sold and distributed to the general public in the United States meets standards set forth by the Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Registrants must certify to the Agency that the packaging or device meets these standards. Section 25(c)(3) of FIFRA authorizes EPA to establish standards for packaging of pesticide products and pesticidal devices to protect children and adults from serious illness or injury resulting from accidental ingestion or contact. The law requires that these standards are designed to be consistent with those under the Poison Prevention Packaging Act, administered by the Consumer Product Safety Commission (CPSC). Unless a pesticide product qualifies for an exemption, if the product meets certain criteria regarding toxicity and use, it must be sold and distributed in child-resistant packaging.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.9 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include large and small entities engaged in manufacturing pesticide chemicals, wholesale merchandizing of pesticide products, or pest management activities. The North American Industrial Classification System (NAICS) codes for respondents under this ICR include 325320 (Pesticide and other Agricultural Chemical Manufacturing), 424690 (Other Chemical and Allied Products Merchant Wholesalers), and 561710 (Exterminating and Pest Control Services).

Estimated total number of potential respondents: 1733.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 5,401 hours.

Estimated total annual costs: \$300,715. There are no non-burden hour paperwork costs, e.g., investment or maintenance and operational costs, included in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall increase of 508 hours in the total estimated respondent burden identified in the currently approved ICR. This increase reflects EPA's updating of burden estimates for

this collection based upon historical information on the number and type of child-resistant packaging (CRP) certifications submitted to the agency. Based upon revised estimates, the number of CRP submissions is expected to decrease from 1,165 to 685. However, a change in the distribution of response types from less-burdensome to more-burdensome responses resulted in an increase in the average burden hours per response from 4.2 hours to 7.9 hours per submission. This change is an adjustment.

B. Docket ID Number EPA-HQ-OPP-2013-0494

Title: Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting.

ICR number: 1693.08.

OMB control number: 2070-0142.

ICR status: The approval for this ICR is scheduled to expire on June 30, 2014.

Abstract: This ICR addresses the two information collection requirements described in regulations pertaining to pesticidal substances that are produced by plants (plant-incorporated protectants) and which are codified in 40 CFR part 174. A plant-incorporated protectant is defined as “the pesticidal substance that is intended to be produced and used in a living plant and the genetic material necessary for the production of such a substance.” Many, but not all, plant-incorporated protectants are exempt from registration requirements under FIFRA. Registrants sometimes include in a submission to EPA for registration of plant-incorporated protectants information that they claim to be CBI. CBI is protected by FIFRA and generally cannot be released to the public. Under 40 CFR part 174, whenever a registrant claims that information submitted to EPA in support of a registration application for plant-incorporated protectants contains CBI, the registrant must substantiate such claims when they are made, rather than provide it later upon request by EPA. In addition, manufacturers of plant-incorporated protectants that are otherwise exempted from the requirements of registration must report adverse effects of the plant-incorporated protectant to the Agency. Such reporting will allow the Agency to determine whether further action is needed to prevent unreasonable adverse effects to the environment.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21.5 hours per CBI substantiation and 7 hours per adverse effects reporting response. The ICR, a copy of which is available in the docket,

provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include producers and importers of plant-incorporated protectants. The NAICS codes for respondents under this ICR include: 325320 (Pesticide and other Agricultural Chemical Manufacturing), 325414 (Biological Products (except Diagnostic Manufacturing), 422910 (Farm Supplies Wholesalers), 422930 (Flower, Nursery Stock, and Florist’s Suppliers), 541710 (Research and Development in the Physical, Engineering, and Life Sciences), and 611310 (Colleges, Universities, and Professional Schools).

Estimated total number of potential respondents: 20.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 432 hours.

Estimated total annual costs: \$31,371. There are no non-burden hour paperwork costs, e.g., investment or maintenance and operational costs, included in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall increase of 43 hours, in the total estimated respondent burden identified in the currently approved ICR. This increase reflects EPA’s updating of burden estimates for this collection based upon historical information on the number of CBI substantiations per year. Based upon revised estimates, the number of CBI substantiations per year has increased from 18 to 20, with a corresponding increase in the associated burden. This change is an adjustment.

C. Docket ID Number EPA-HQ-OPP-2013-0617

Title: Experimental Use Permits (EUPs) for Pesticides.

ICR number: 0276.15.

OMB control number: 2070-0040.

ICR status: The approval for this ICR is scheduled to expire on June 30, 2014.

Abstract: FIFRA requires that before a pesticide product may be distributed or sold in the United States, it must be registered by EPA. Section 5 of FIFRA authorizes EPA to issue experimental use permits (EUPs) which allow companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUPs are issued either for a pesticide not registered with the Agency or for a new use of a registered pesticide. The EUP

application must be submitted in order to obtain a permit. This information collection provides EPA with the data necessary to determine whether to issue a EUP under section 5 of FIFRA.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32.8 hours, per chemical pesticide EUP response and 147 hours, per plant-incorporated protectants EUP response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include individuals or entities engaged in pesticide, fertilizer, and other agricultural chemical manufacturing. The NAICS codes for respondents under this ICR include: 325320 (Pesticide and other Agricultural Chemical Manufacturing).

Estimated total number of potential respondents: 30.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 556 hours.

Estimated total annual costs: \$33,872. There are no non-burden hour paperwork costs, e.g., investment or maintenance and operational costs, included in this information collection.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall decrease of 1,351 hours in the total estimated respondent burden identified in the currently approved ICR. This decrease reflects EPA’s updating of burden estimates for this collection based upon historical information on the reduced number of EUP submissions for chemical pesticides, as well as a decrease in the number of EUP applications that are plant-incorporated protectants. This change is an adjustment.

V. What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the individual ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of these ICRs to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about any of these ICRs or the approval process in general, please contact the

person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: September 13, 2013.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2013-23067 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2013-0282; FRL-9536-8]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Willingness To Pay Survey for Santa Cruz River Management Options in Southern Arizona (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Willingness To Pay Survey for Santa Cruz River Management Options in Southern Arizona (New)" (EPA ICR No. 2484.01, OMB Control No. 2080-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** (78 FR 26773) on May 8, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 25, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-ORD-2013-0282, to (1) EPA online using www.regulations.gov (our preferred method), by email to ord.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB via email to oir_submission@omb.eop.gov.

Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Matthew A. Weber, Environmental Protection Agency, 200 SW. 35th St., Corvallis, OR 97333; telephone number: (541) 754-4315; fax number: (541) 754-4799; email address: weber.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The USEPA Office of Research and Development is investigating public values for scenarios of change for perennial reaches of the effluent-dominated Santa Cruz River, Arizona. These values will be estimated via a willingness to pay mail survey instrument. There are two effluent-dominated perennial reaches considered in the survey. A "South" reach starts at an outfall in Rio Rico, AZ, and flows northward through Tumacacori National Historical Park. A "North" reach is fed by two outfalls in northwest Tucson, Arizona, flows northwest through Marana, AZ. For each of the South and North reaches, two different scenarios of change are considered. The first is a reduction in flow length, and associated decreases in cottonwood-willow riparian forest, a rare forest type in the region. The second is an increase in water quality to allow full contact recreation, such as submersion, at normal flow levels. The baseline flow length and forest acreages, as well as the acreages of forest that would be associated with reduced flow lengths, are derived from natural science information and modeling. For the survey, a choice experiment framework is used with statistically designed alternative choices. Options to maintain flow length and forest, or increase effluent water quality, are posed as increases in a yearly household tax.

Each choice question allows a zero cost "opt out" option. The choice experiment is designed to allow isolation of the public value of each marginal change for each reach. A few additional questions to further understand respondent choice motivations, as well as their river-related recreation behavior, are also included. Several pages of background introduce the issue to respondents. A small number of sociodemographic questions are included to gauge how well the sample respondents represent the target population. Samples of the two major metropolitan areas in southern Arizona, Phoenix and Tucson, will receive the survey. The primary reason for the survey is public value research. The Santa Cruz River is a case study of a waterway highly impacted by human modifications. However it still represents potentially valuable ecological commodities such as rare riparian habitat and recreational opportunities for the regional population. The survey results may also be informative to local decision-makers considering Santa Cruz River management options. Water scarcity in the region raises periodic debates on the best uses of effluent. All survey responses will be kept confidential.

Form Numbers: None.

Respondents/affected entities: The target respondents for this survey are representatives 18 yrs or older of households in the two most populated urban areas of Arizona, the Phoenix metro area, and the Tucson metro area.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 500 households.

Frequency of response: One-time response.

Total estimated burden: 250 hours.

Total estimated cost: \$5,275, which includes no operations and maintenance costs.

Changes in the Estimates: This is a new ICR, thus there is no currently approved burden.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2013-23351 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9901-33-OAR]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet on October 29, 2013. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: http://www.epa.gov/air/caaac/mobile_sources.html. MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserv, send an email to Etchells.elizabeth@epa.gov.

DATES: Tuesday, October 29, 2013 from 9:00 a.m. to 4:30 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at The Madison Hotel at 1177 15th St. NW., Washington, DC 20005. However, this date and location are subject to change and interested parties should monitor the Subcommittee Web site (above) for the latest logistical information. The hotel is located five blocks from the McPherson Square Metro Station.

FOR FURTHER INFORMATION CONTACT: For technical information: Elizabeth Etchells, Designated Federal Officer, Transportation and Climate Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: 202-343-9231; email: Etchells.elizabeth@epa.gov. For logistical and administrative information: Ms. Cheryl Jackson, U.S. EPA, Transportation and Climate Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; 202-343-9653; email: jackson.cheryl@epa.gov.

Background on the work of the Subcommittee is available at: http://www.epa.gov/air/caaac/mobile_sources.html. Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Etchells at the address above by October 15, 2013. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its

workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Ms. Etchells or Ms. Jackson (see above). To request accommodation of a disability, please contact Ms. Etchells or Ms. Jackson, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 18, 2013.

Christopher Grundler,
Director, Office of Transportation and Air Quality.

[FR Doc. 2013-23369 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9901-32-OA]

Notification of a Closed Meeting of the Science Advisory Board's Scientific and Technological Achievement Awards Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office announces a meeting of the SAB's Scientific and Technological Achievement Awards (STAA) Committee to discuss SAB recommendations regarding the Agency's 2013 STAA recipients. The SAB meeting will be closed to the public.

DATES: The SAB meeting dates are Monday and Tuesday, October 21 and 22, 2013, from 8:00 a.m. to 6:00 p.m. (Eastern Time).

ADDRESSES: The closed SAB meeting will be held at the Ronald Reagan Building and International Trade Center, Suite 31146, 1300 Pennsylvania Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Mr. Edward Hanlon, Designated Federal Officer, by telephone: (202) 564-2134 or email at hanlon.edward@epa.gov. The SAB Mailing address is: U.S. EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information about the SAB concerning the SAB meeting announced in this notice may be found

on the SAB Web site at <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the SAB meeting will be closed to the public. The purpose of the SAB meeting is for the Committee to discuss recommendations for the SAB regarding the recipients of the Agency's 2013 Scientific and Technological Achievement Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the SAB meeting will be closed to the public because it is concerned with selecting employees deserving of awards. In making these recommendations, the Agency requires full and frank advice from the SAB. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the SAB meeting will be kept and certified by the Chair.

Dated: September 17, 2013.

Gina McCarthy,
Administrator.

[FR Doc. 2013-23372 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9901-27-Region 5]

Notification of a Public Teleconference of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), on behalf of the federal Great Lakes Restoration Initiative (GLRI) Task Force agencies, announces a public teleconference of the Great Lakes Advisory Board (GLAB). The purpose of the teleconference is for the GLAB to discuss its draft recommendations that will inform the development of a draft

Great Lakes Restoration Initiative FY 2015–2019 Action Plan.

DATES: The public teleconference will be held on October 1, 2013 from 10 a.m. to 11:30 a.m. Central Daylight Time. The teleconference number is 877-744-6030. Due to budgetary uncertainties, EPA is announcing this meeting with less than 15 calendar days public notice.

ADDRESSES: The public teleconference will take place by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this teleconference may contact Rita Cestarcic, Designated Federal Officer (DFO), GLAB, by telephone at (312) 886-6815 or email at cestarcic.rita@epa.gov. General information on the Great Lakes Restoration Initiative (GLRI) and the GLAB can be found on the GLRI Web site at <http://www.glri.us>.

SUPPLEMENTARY INFORMATION:

Background: The GLAB is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the GLAB in 2013 to provide independent advice to the EPA Administrator in his or her capacity as Chair of the federal Great Lakes Interagency Task Force. The GLAB conducts business in accordance with FACA and related regulations.

The GLAB consists of 18 members appointed by EPA's Administrator. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, foundations, educational institutions and as technical experts.

The GLAB held meetings on May 21–22, 2013 and July 23, 2013 (as noticed in 78 FR 26636–26637 and 78 FR 42944) as well as a teleconference on June 12, 2103 (noticed in 78 FR 32645–32646) to discuss the development of a draft FY 2015–2019 GLRI Action Plan. The purpose of the October 1, 2013 teleconference is for the panel to discuss their draft recommendations.

Availability of Teleconference Materials: The agenda and other materials in support of the teleconference will be available on the GLRI Web site at <http://www.glri.us> in advance of the teleconference.

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the GLAB. Input from the public to the GLAB will have the most impact if it provides specific information for the GLAB to consider. Members of the

public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public teleconference will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact Rita Cestarcic, DFO, in writing (preferably via email) at the contact information noted above by September 30, 2013 to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements must be received by September 30, 2013 so that it may be made available to the GLAB for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: one each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact Rita Cestarcic at the phone number or email address noted above, preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: September 7, 2013.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2013–23244 Filed 9–24–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9400–7]

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 Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a February 22, 2013 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the February 22, 2013 **Federal Register** notice, EPA indicated

that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one comment on the February 22, 2013 **Federal Register** notice but it did not merit its further review of the request. Further, the registrants did not withdraw their request. 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 cancellation order, including any existing stocks provisions.

DATES: The cancellations are effective September 25, 2013.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: pates.john@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–2010–0014, 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 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

In addition, several product registrations were originally listed in the February 22, 2013 **Federal Register** notice, but are not included in Table 1 of this unit due to cancellations made final prior to the August 21, 2013 deadline.

More specifically, pesticide products cancelled via company request on

February 6, 2013, includes 061483–00011 and 061483–00012, while product OR–030037 was cancelled on July 31, 2013. Four other pesticide registrations (000655–00802, 074062–00002, CA–870038, and WA–070010) were cancelled due to non-payment of the 2013 pesticide maintenance fee (effective July 22, 2013).

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000241–00391	Pendulum 3.3 Herbicide	Pendimethalin.
000241–00403	Pendimethalin Manufacturing Concentrate Herbicide.	Pendimethalin.
000264–00807	Calypso 70WG Insecticide	Thiacloprid.
009688–00198	Chemsico Herbicide Concentrate DP	Prometon, Diquat dibromide.
009688–00218	Chemsico Herbicide RTU DP	Prometon, Diquat dibromide.
053883–00135	Esfenvalerate AG	Esfenvalerate.
CA–060004	Gramoxone Inteon	Paraquat dichloride.
CO–110002	Rozol Prairie Dog Bait	Chlorophacinone.
ID–980007	Agri-Mek 0.15 EC Miticide/Insecticide	Abamectin.
IL–050001	Callisto	Mesotrione.
LA–090006	Confirm 2F	Tebufenozide.
OR–040013	Agri-Mek 0.15 EC Miticide/Insecticide	Abamectin.
OR–060006	Prowl H2O Herbicide	Pendimethalin.
OR–060007	Prowl H2O Herbicide	Pendimethalin.
TX–060017	Gramoxone Inteon	Paraquat dichloride.
VA–060002	Gramoxone Inteon	Paraquat dichloride.
WA–030007	Trinexapac Liquid	Trinexapac-ethyl.
WA–080006	Provide 10SG	Gibberellin A4 mixt. with Gibberellin A7.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 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 Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
241 (OR–060006, OR–060007)	BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528.
264	Bayer CropScience LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
9688	Chemsico, P.O. Box 142642, St. Louis, MO 63114–0642.
53883	Control Solutions, Inc. 5903 Genoa-Red Bluff Rd., Pasadena, TX 77057–1041.
CA–060004, ID–980007, IL–050001, OR–040013, TX–060017, VA–060002, WA–030007.	Syngenta Crop Protection, LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300.
CO–110002	Liphatech, Inc., 3600 W. Elm St., Milwaukee, WI 53209.
LA–090006	Dow AgroSciences LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
WA–080006	Valent BioSciences Corporation, Environmental Science Division, 870 Technology Way, Libertyville, IL 60048–6316.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one comment. The Agency does not believe that the comment submitted during the comment period merits further review or a denial of the request for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is September 25, 2013. Any distribution,

sale, or use of existing stocks of the products identified in Table 1 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 February 22, 2013 (78 FR 12313) (FRL-9378-7). The comment period closed on August 21, 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 cancellation order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until September 25, 2014, which is 1 year after the publication of the cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 18, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2013-23392 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2013-0625; FRL-9399-3]

Registration Review; Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this document, EPA is opening the public comment period for several registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document announces the Agency's intent not to open a registration review docket for dithianon (case #7048) and flufenoxuron (cast #7444). These cases do not currently have actively registered products and are not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before November 25, 2013.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW.,

Washington, DC 20460-0001; telephone number: (703) 347-8827; fax number: (703) 308-7070; email address: friedman.dana@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, farmworker, 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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s)

discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any

unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the Agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide’s registration review begins when the Agency establishes a docket for the pesticide’s registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and number	Docket ID No.	Chemical review manager telephone number, email address
Aluminum phosphide (0025), magnesium phosphide (0645), and phosphine (7608).	EPA-HQ-OPP-2013-0081	Dana L. Friedman, 703-347-8827, friedman.dana@epa.gov .
Chloropicrin (0040)	EPA-HQ-OPP-2013-0153	Carolyn Schroeder, 703-308-2961, schroeder.carolyn@epa.gov .
Dazomet (2135)	EPA-HQ-OPP-2013-0080	Dana L. Friedman, 703-347-8827, friedman.dana@epa.gov .
Dimethyldithiocarbamate salts (8100)	EPA-HQ-OPP-2013-0245	Sandra O'Neill, 703-347-0141, oneill.sandra@epa.gov .
Ethylene oxide (2275)	EPA-HQ-OPP-2013-0244	Seiichi Murasaki, 703-347-0163, murasaki.seiichi@epa.gov .
Inorganic sulfites (sulfur dioxide (4056) and sodium metabisulfite (7019)).	EPA-HQ-OPP-2013-0598	Khue Nguyen, 703-347-0248, nguyen.khue@epa.gov .
Methoprene (0030)	EPA-HQ-OPP-2013-0586	Cheryl Greene, 703-308-0352, green.cheryl@epa.gov .
Methyl bromide (0335)	EPA-HQ-OPP-2013-0269	Susan Bartow, 703-603-0065, bartow.susan@epa.gov .
Methyldithiocarbamate salts (metam sodium and metam potassium (2390)).	EPA-HQ-OPP-2013-0140	Jose Gayoso, 703-347-8652, gayoso.jose@epa.gov .
Methyl isothiocyanate (MITC (2405))	EPA-HQ-OPP-2013-0242	Wanda Henson, 703-308-6345, henson.wanda@epa.gov .
<i>Myrothecium verrucaria</i>	EPA-HQ-OPP-2013-0539	Michael Glikes, 703-305-6231, glikes.michael@epa.gov .
Plant Extract (6071)	EPA-HQ-OPP-2013-0587	Colin G. Walsh, 703-308-0298, walsh.colin@epa.gov .
Propylene oxide (2560)	EPA-HQ-OPP-2013-0156	Garland Waleko, 703-308-8049, waleko.garland@epa.gov .
1,3-Dichloropropene (0328)	EPA-HQ-OPP-2013-0154	Margaret Hathaway, 703-305-5076, hathaway.margaret@epa.gov .
2-Phenylphenol and salts (2575)	EPA-HQ-OPP-2013-0524	Seiichi Murasaki, 703-347-0163, murasaki.seiichi@epa.gov .

EPA is also announcing that it will not be opening dockets for dithianon (case #7048) and flufenoxuron (case #7444) because these pesticides are not included in any products actively registered under FIFRA sections 3.

The ‘Biochemical Case Schedule’ lists the active ingredient Virelure as a proposed registration review case for Fiscal Year 2013 (Case# 4118). However,

an assessment of Virelure reveals that it is a ‘Straight Chain Lepidopteran Pheromone’ (SCLP) and, as such, falls under an existing registration review case by that name. Accordingly, all information relevant to the registration review of Virelure can be found in Docket # EPA-HQ-OPP-2012-0127, established for Registration Review Case

8200: Straight Chain Lepidopteran Pheromones.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files

including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at http://www.epa.gov/oppsrrd1/registration_review/schedule.htm. Information on the Agency's registration review program and its implementing regulation may be seen at http://www.epa.gov/oppsrrd1/registration_review.

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

- Submitters must clearly identify the source of any submitted data or information.

- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, Fumigants.

Dated: September 18, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013-23393 Filed 9-24-13; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small

business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0686.

Title: International Section 214 Process and Tariff Requirements, 47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311.

Form No.: FCC Form 214.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,670 respondents; 10,264 responses.

Estimated Time per Response: 0.50-16 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4(i), 4(j)11, 201-205, 211, 214, 219, 220, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 21, 201-205, 214, 219, 220, 303(r), 309, and sections 34-39.

Total Annual Burden: 34,376 hours.

Total Annual Cost: \$3,625,390.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to Office of Management and Budget (OMB) as an extension after this 60-day comment period has ended in order to obtain the full three-year OMB clearance.

The collection of information is used by the Commission staff in carrying out

its duties under the Communications Act. The information collections pertaining to Part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission obtains the approval from the State Department and seeks advice from other government agencies as appropriate. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity.

If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934 and the Cable Landing License Act. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013-23240 Filed 9-24-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0798.

Title: FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau Public Safety and Homeland Security Bureau.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal government.

Number of Respondents and Responses: 253,120 respondents; 253,120 responses.

Estimated Time per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, Record Keeping & Other—10 year.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, and 535.

Total Annual Burden: 221,780 hours.

Total Annual Cost: \$55,410,000.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality:

In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form, or "long form," that is used for general market-based licensing and site-by-site licensing for wireless telecommunications and public safety services filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains the administrative information and a series of schedules used for filing technical and other information. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 include the FCC Registration Number (FRN), which serves as a "common link" for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires that those entities filing with the Commission to use a FRN.

FCC Form 601 is being used for auctionable services as they are implemented; FCC Form 601 is used to apply for a new authorization, or to amend a pending application for an authorization to operate a license wireless radio services. This includes Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Instructional

Television Fixed Service (ITFS) and the Multipoint Distribution Service (MDS), Maritime Services (excluding ships), and Aviation Services (excluding aircraft). It may also be used to modify or renew an existing license, cancel a license, withdraw a pending application, obtain a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority (STA) or a Developmental License.

The form 601 is being revised to add a National Security Certification that is applicable to applicants for licenses issued as a result of the Middle Class Tax Relief and Job Creation Act of 2012 (2012 Spectrum Act). Section 6004 of the 2012 Spectrum Act, 47 U.S.C 1404, prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the 2012 Spectrum Act.

On June 27, 2013, the Commission released a Report and Order (R&O), FCC 13–88, WT Docket No. 12–357, in which it established service rules and competitive bidding procedures for the 1915–1920 MHz and 1995–2000 MHz bands. See Service Rules for the Advanced Wireless Services H Block-Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands, *Report and Order*, FCC 13–88, 28 FCC Rcd 9483 (2013). The R&O also implemented Section 6004 by requiring that a party seeking to participate in any auction conducted pursuant to the 2012 Spectrum Act certify in its application, under penalty of perjury, the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant and thus statutorily prohibited from participating in such a Commission auction or being issued a license. The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to include this additional certification. The revised collection will enable the Commission to determine whether an applicant's request for a license pursuant to the 2012 Spectrum Act is consistent with Section 6004.

Additionally, the form 601 is being revised to update the Alien Ownership certifications pursuant to the Second Report and Order FCC 13–50 IB Docket 11–133 Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended.

The addition of the National Security Certification and the revision to the Alien Ownership certification result in no change in burden for the revised collection. The Commission estimates that the additional certification will not measurably increase the estimated average amount of time for respondents to complete FCC Form 601 across the range of applicants or for Commission staff to review the applications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–23235 Filed 9–24–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov or Cathy.Williams@fcc.gov and to PRA@fcc.gov or Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1053.

Title: Two-Line Captioned Telephone Order, IP Captioned Telephone Service Declaratory Ruling; and Internet Protocol Captioned Telephone Service Reform Order, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5 respondents; 216,080 responses.

Estimated Time per Response: .25 hours (15 minutes) to 20 hours.

Frequency of Response: Annual, every five years, on-going, and one-time reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirement is found at Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired Individuals; The Americans with Disabilities Act of 1990, (ADA), Public Law 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990.

Total Annual Burden: 145,852 hours.
Total Annual Cost: \$555,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 1, 2003, the Commission released the *Declaratory Ruling*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, published at 68 FR 55898, September 28, 2003. In the *Declaratory Ruling*, the Commission clarified that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarified that certain TRS mandatory minimum standards does not apply to one-line captioned telephone VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time beginning August 1, 2003. The waivers were contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604 (a)(1) and (a)(3) of the Commission's rules, which contained information collection requirements under the PRA became effective on March 26, 2004.

On July 19, 2005, the Commission released a *Order*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67 and CG Docket No. 03–123, published at 70 FR 54294, September 14, 2005, that clarified two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a type of TRS eligible for compensation from the Interstate TRS Fund. Also, the Commission clarified that certain TRS mandatory minimum standards do not apply to two-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules, for providers who offers two-line captioned VCO service. This clarification increased the number of providers who will be providing one-line and two-line captioned telephone VCO services.

On January 11, 2007, the Commission released a *Declaratory Ruling*, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, published at 72 FR 6960, February 14, 2007, granting a request for clarification that Internet Protocol (IP) captioned telephone relay service (IP CTS) is a type of TRS eligible for compensation from the Interstate TRS Fund (Fund) when offered in

compliance with the applicable TRS mandatory minimum standards.

On August 26, 2013, the Commission issued a *Report and Order*, In the Matter of Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13–24 and 03–123, published at 78 FR 53684, August 30, 2013, to address on an ongoing basis the recent dramatic spike in IP CTS usage that, if left unaddressed, would constitute a serious threat to the Fund. The *Report and Order* regulates practices relating to the marketing of IP CTS, imposes certain requirements for the provision of this service, and mandates registration and certification of IP CTS users.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–23216 Filed 9–24–13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0357.

Title: Recognized Private Operating Agency (RPOA), 47 CFR 63.701.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 2–5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(j), 201, 214 and 403.

Total Annual Burden: 35 hours.

Annual Cost Burden: \$17,650.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality:

In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension after the 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission requests this information in order to make recommendations to the U.S. Department of State for granting recognized private operating agency (RPOA) status to requesting entities. The Commission does not require entities to request RPOA status. Rather, this is a voluntary application process for use by companies that believe that obtaining RPOA status will be beneficial in persuading foreign governments to

allow them to conduct business abroad. RPOA status also permits companies to join the International

Telecommunication Union's (ITU's) Telecommunications Sector, which is the standards-setting body of the ITU.

The information furnished in RPOA requests is collected pursuant to 47 CFR 63.701 of the Commission's rules. Entities submit these applications on a voluntary basis. The collection of information is a one-time collection for each respondent. Without this information collection, the Commission's policies and objectives for assisting unregulated providers of enhanced services to enter the market for international enhanced services would be thwarted.

OMB Control No.: 3060–1028.

Title: International Signaling Point Code (ISPC).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20 respondents; 20 responses.

Estimated Time per Response: .333 hours (20 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 214, 219–220, 303(r), and 403.

Total Annual Burden: 7 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

An International Signaling Point Code (ISPC) is a unique, seven-digit code synonymously used to identify the signaling network of each international carrier. The ISPC has a unique format that is used at the international level for signaling message routing and identification of signaling points. The Commission receives ISPC applications from international carriers on the electronic, Internet-based International Bureau Filing System (IBFS). After receipt of the ISPC application, the Commission assigns the ISPC code to each applicant (international carrier) free of charge on a first-come, first-

served basis. The collection of this information is required to assign a unique identification code to each international carrier and to facilitate communication among international carriers by their use of the ISPC code on the shared signaling network. The Commission informs the International Telecommunications Union (ITU) of its assignment of ISPCs to international carriers on an ongoing basis.

OMB Control No.: 3060–1029.

Title: Data Network Identification Code (DNIC).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 5 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collections is contained in 47 U.S.C. 151, 154(i)–(j), 201–205, 211, 214, 219, 220, 303(r), 309 and 403.

Total Annual Burden: 1 hour.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension (no change in reporting or recordkeeping requirements) after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

A Data Network Identification Code (DNIC) is a unique, four-digit number designed to provide discrete identification of individual public data networks. The DNIC is intended to identify and permit automated switching of data traffic to particular networks. The FCC grants the DNICs to operators of public data networks on an international protocol. The operators of public data networks file an application for a DNIC on the Internet-based, International Bureau Filing System (IBFS). The DNIC is obtained free of charge on a one-time only basis unless there is a change in ownership or the owner chooses to relinquish the code to the FCC. The Commission's lack of an assignment of DNICs to operators of public data networks would result in technical problems that prevent the identification and automated switching of data traffic to particular networks.

OMB Control Number: 3060–0944.

Title: Cable Landing License Act, 47 CFR 1.767; Executive Order 10530.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 255 respondents; 255 responses.

Estimated Time per Response: 1–16 hours (average).

Frequency of Response: On occasion reporting requirement; third party disclosure requirement and quarterly reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in the Submarine Cable Landing License Act of 1921, Executive Order 10530, 47 U.S.C. 34, 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

Total Annual Burden: 534 hours.

Total Annual Cost: \$275,205.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to Office of Management and Budget (OMB) as an extension (no change in requirements) after this 60 day comment period has ended in order to obtain the full three year OMB clearance.

The information will be used by the Commission staff in carrying out its duties under the Cable Landing License Act and the Coastal Zone Management Act of 1972. The information collections pertaining to Part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission must obtain the approval of the State Department and seek advice from other government agencies as appropriate.

The frequency of filing applications under the Cable Landing License Act will be determined largely by the applicants seeking to construct and operate a submarine cable. If the collection is not conducted or is conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Cable Landing License Act, Executive Order 10530 and the Coastal Zone Management Act of 1972. In addition, without the

collection, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because these information collection requirements are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013-23239 Filed 9-24-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office

of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov/mailto:PRA@fcc.gov and to Cathy.Williams@fcc.gov/mailto:Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-0984.

Title: Section 90.35(b)(2), Industrial/Business Pool, and 90.175(b)(1), Frequency Coordinator Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, and State, Local or Tribal Government.

Number of Respondents and Responses: 2,500 respondents; 2,500 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One time reporting requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Total Annual Burden: 2,500 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Sections 90.35 and 90.175 require third party disclosures by applicants proposing to operate a land mobile radio station. If they have service contours that overlap an existing land mobile station they are required to obtain written concurrence of the frequency coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station.

This information will be used by Commission personnel in evaluating the applicant's need for such frequencies and to minimize the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013-23236 Filed 9-24-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov<mailto:PRA@fcc.gov> and to Cathy.Williams@

[fcc.gov](mailto:Cathy.Williams@fcc.gov)<<mailto:Cathy.Williams@fcc.gov>>.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1089.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers; Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03-123, WC Docket No. 05-196, and WC Docket No. 10-191; FCC 08-151, FCC 08-275, FCC 11-123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households; State, local or tribal government.

Number of Respondents and Responses: 8 respondents; 2,495,002 responses.

Estimated Time per Response: 0.25 hours (15 minutes) to 1.5 hours.

Frequency of Response: On occasion and one-time reporting requirements; Recordkeeping and third party disclosure requirements; Quarterly reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in Sections 1, 4(i), 4(j), 225, 251 (e), and 255 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 251(e), and 255.

Total Annual Burden: 99,221 hours.
Total Annual Cost: \$4,269,135.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 4, 2011 the Commission released Report and Order FCC 11-123, published at 76 FR 59551, September 27, 2011, adopting final rules-containing information collection requirements-designed to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS). Specifically, the final rules, described below are designed to promote the use of geographically appropriate local numbers, while ensuring that the deaf and hard-of-hearing community has access to toll free telephone numbers that is

equivalent to access enjoyed by the hearing community.

Below are the new and revised information collection requirements contained in the Report and Order:

A. Provision of Routing Information

In addition to provisioning their registered users' routing information to the TRS Numbering Directory and maintaining such information in the database, the VRS and IP relay providers must ensure that the toll free number of a user that is associated with a geographically appropriate NANP number will be associated with the same Uniform Resource Identifier URI as that geographically appropriate NANP telephone number.

B. User Notification

In addition to the information that the Commission previously instructed VRS and IP Relay providers to include in the consumer advisories, VRS and IP Relay providers must also include certain additional information in their consumer advisories under the Report and Order. Specifically, the consumer advisories must explain: (1) the process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and (2) the process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013-23237 Filed 9-24-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are

requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-1121.

Title: Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit Institutions.

Number of Respondents and Responses: 1,195 respondents and 1,195 responses.

Estimated Time per Response: 1-2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,960 hours.

Total Annual Cost: \$1,078,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

There is no need for confidentiality with this collection of information.

Needs and Uses: On August 14, 2013, the Commission adopted the *Third Report and Order and Second Order on Reconsideration* in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93-177, FCC 13-115. In the *Third Report and Order* in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Our old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the *Third Report and Order* the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The *Third Report and Order* also designates "moment method" computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

New Information Collection Requirements

47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification

would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002(c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current

tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93-177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this Part. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302-AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302-AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if

necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302-AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002–1.30003 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as "expedited," and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower

or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPPM applicant to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

47 CFR 73.1675(c)(1) states that where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

47 CFR 73.1690(c) requires FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013-23238 Filed 9-24-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 78 FR 57632 (September 19, 2013).

DATE & TIME: Tuesday, September 24, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

CHANGES IN THE MEETING: The September 24, 2013 meeting will be continued on Thursday, September 26, 2013.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013-23414 Filed 9-23-13; 11:15 am]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *James M. and Devon J. Goetz Family Trust Four*, Mandan, North Dakota; to become a bank holding company by acquiring at least 39 percent of the voting shares of Oliver Bancorporation, Inc., Center, North Dakota, and thereby indirectly acquire voting shares of Security First Bank of North Dakota, New Salem, North Dakota.

Board of Governors of the Federal Reserve System, September 20, 2013.

Margaret McCloskey Shanks,
Deputy Secretary of the Board.

[FR Doc. 2013-23337 Filed 9-24-13; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend through February 28, 2017, the current Paperwork Reduction Act (“PRA”) clearance for the FTC’s enforcement of the information collection requirements in its regulation “Used Motor Vehicle Trade Regulation Rule” (“Used Car Rule” or “Rule”), which applies to used vehicle dealers. That clearance expires on February 28, 2014.

DATES: Comments must be filed by November 25, 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 “Used Car Rule, PRA Comment, P137606” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/usedcarrulepra> 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 J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John C. Hallerud, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe, Suite 1825, Chicago, IL 60603, 312-960-5634.

SUPPLEMENTARY INFORMATION: The Used Car Rule promotes informed purchasing decisions by requiring used car dealers to disclose information about warranty coverage, if any, and purchasing advice on used cars that they offer for sale. The Rule requires that used car dealers display a form called a “Buyers Guide” on each used car offered for sale that, among other things, discloses information about warranty coverage.

Burden statement:

Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must get OMB

approval for each collection of information they conduct or sponsor. “Collection of information” includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The Rule has no recordkeeping or reporting requirements; as detailed further under the Request for Comment, the FTC seeks clearance for the Rule’s disclosure requirements and the estimated PRA burden for them.

Estimated total annual hours burden: 2,296,227 hours.

As explained in more detail below, this estimate is based on the number of used car dealers (55,432¹), the number of used cars sold by dealers annually (approximately 28,958,000²), and the time needed to fulfill the information collection tasks required by the Rule.³

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide on each used car that they offer for sale. The component tasks associated with the Rule’s required display of Buyers Guides include: (1) Ordering and stocking Buyers Guides; (2) entering data on Buyers Guides; (3) displaying the Buyers Guides on vehicles; (4) revising Buyers Guides as necessary; and (5) complying with the Rule’s requirements for sales conducted in Spanish.

1. Ordering and Stocking Buyers Guides: Dealers should need no more than an average of two hours per year to obtain Buyers Guides, which are readily available from many commercial printers or can be produced by an office word-processing or desk-top publishing

¹ 37,892 independent dealers in 2012. *NIADA Used Car Industry Report* (2013), at 16. 17,540 franchised new car dealers in 2012. *NADA Data State-of-the Industry Report 2013*, at 5.

² The number of used car sales conducted by dealers in 2012 is calculated by multiplying the percentage of used car sales conducted by dealers (71.5%) by the 40.5 million used cars sold in 2012. *NIADA Used Car Industry Report* (2013), 16-17. In 2012, franchised new car dealers conducted 36.9%, and independent used car dealers conducted 34.6%, of used car sales. *Id.* Private parties sold the remaining used cars. *Id.*

³ Some dealers opt to contract with outside contractors to perform the various tasks associated with complying with the Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to “dealers,” incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule. The time estimates repeat those that the FTC published, without receiving public comment, when the FTC last pursued renewed clearance for the Rule. See 75 FR 62538 (Oct. 12, 2010); 76 FR 144 (Jan. 3, 2011). Absent prospective specific industry estimates to the contrary, staff will continue to apply these estimates.

system.⁴ Based on an estimated population of 55,432 dealers in 2012, the annual hours burden for producing or obtaining and stocking Buyers Guides is 110,864 hours.

2. Entering Data on Buyers Guides: The amount of time required to enter applicable data on Buyers Guides may vary substantially, depending on whether a dealer has automated the process. For used cars sold “as is,” copying vehicle-specific data from dealer inventories to Buyers Guides and checking the “No Warranty” box may take two to three minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process or use pre-printed forms. Staff estimates that dealers will require an average of two minutes per Buyers Guide to complete this task. Similarly, for used cars sold under warranty, the time required to check the “Warranty” box and to add warranty information, such as the additional information required in the Percentage of Labor/Parts and the Systems Covered/Duration sections of the Buyers Guide, will depend on whether the dealer uses a manual or automated process or Buyers Guides that are pre-printed with the dealer’s standard warranty terms. Staff estimates that these tasks will take an average of one additional minute, *i.e.*, cumulatively, an average total time of three minutes for each used car sold under warranty.

Staff estimates that dealers sell approximately fifty percent of used cars “as is” and the other half under warranty. Therefore, staff estimates that the overall time required to enter data on Buyers Guides consists of 482,633 hours for used cars sold without a warranty (28,958,000 vehicles × 50% × 2 minutes per vehicle) and 723,950 hours for used cars sold under warranty (28,958,000 vehicles × 50% × 3 minutes per vehicle) for a cumulative estimated total of 1,206,583 hours.

3. Displaying Buyers Guides on Vehicles: Although the time required to display the Buyers Guides on each used car may vary substantially, FTC staff estimates that dealers will spend an average of 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle. The estimated burden associated with this task is approximately 844,608 hours for the 28,958,000 vehicles sold in 2012 (28,958,000 vehicles × 1.75 minutes per vehicle).

4. Revising Buyers Guides as Necessary: If negotiations between the

⁴ Buyers Guides are also available online from the FTC’s Web site, www.ftc.gov, at <http://business.ftc.gov/selected-industries/automobiles>.

buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Buyers Guide to reflect the actual terms of sale.

According to the original rulemaking record, bargaining over warranty coverage rarely occurs. Staff notes that consumers often do not need to negotiate over warranty coverage because they can find vehicles that are offered with the desired warranty coverage online or in other ways before ever contacting a dealer. Accordingly, staff assumes that dealers will revise the Buyers Guide in no more than two percent of sales, with an average time of two minutes per revision. Therefore, staff estimates that dealers annually will spend approximately 19,305 hours revising Buyers Guides (28,958,000 vehicles \times 2% \times 2 minutes per vehicle).

5. *Spanish Language Sales:* The Rule requires dealers to make contract disclosures in Spanish if the dealer conducts a sale in Spanish.⁵ The Rule permits displaying both an English and a Spanish language Buyers Guide to comply with this requirement.⁶ Many dealers with large numbers of Spanish-speaking customers likely will post both English and Spanish Buyers Guides to avoid potential compliance violations.

Calculations from United States Census Bureau surveys indicate that approximately 5.6 percent of the United States population speaks Spanish at home, without also speaking fluent English.⁷ Staff therefore projects that dealers will conduct approximately 5.6 percent of used car sales in Spanish. Dealers will incur the additional burden of completing and displaying a second Buyers Guide in 5.6 percent of sales assuming that dealers choose to comply with the Rule by posting both English and Spanish Buyers Guides. The annual hours burden associated with completing and displaying Buyers Guides is 2,051,191 hours (1,206,583 hours for entering data on Buyers Guides + 844,608 hours for displaying Buyers Guides). Therefore, staff estimates that the additional burden caused by the Rule's requirement that dealers display Spanish language Buyers Guides when conducting sales in Spanish is 114,867 hours (2,051,191 hours \times 5.6% of sales). The other

components of the annual hours burden, *i.e.*, purchasing Buyers Guides and revising them for changes in warranty coverage, remain unchanged.

Estimated annual cost burden:

\$32,307,914 in labor costs and \$8,687,400 in non-labor costs.

1. *Labor costs:* Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed, including the corresponding tasks associated with Spanish Buyers Guides, are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of \$14.07 per hour⁸ and an estimated burden of 2,296,227 hours for disclosure requirements, the total labor cost burden is \$32,307,914 (\$1,407 per hour \times 2,296,277 hours).

2. *Capital or other non-labor costs:* Although the cost of Buyers Guides can vary considerably, staff estimates that the average cost of each Buyers Guide is thirty cents based on industry input. Therefore, the estimated cost of Buyers Guides for the 28,958,000 used cars sold by dealers in 2012 is approximately \$8,687,400. In making this estimate, staff conservatively assumes that all dealers will purchase pre-printed forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are minimal.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before November 25, 2013.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 25, 2013. Write "Used Car Rule, PRA Comment, P137606" 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 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 does not 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 does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential" as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not 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 you have to follow the procedure explained in FTC Rule 4.9(c).⁹ Your comment will be kept confidential only if the FTC General Counsel 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/usedcarrulepra>, 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.

⁵ 16 CFR 455.5.

⁶ *Id.*

⁷ U.S. Census Bureau, TableB16001. *Language Spoken at Home. 2011 American Community Survey 1-Year Estimates*, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_B16001&prodType=table (5.6% of the United States population 5 years or older who speaks Spanish or Spanish Creole in the home speaks English less than "very well.").

⁸ The hourly rate is based on the Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general. *Occupational Employment and Wages, May 2012, 43-9061 Office Clerks, General*, available at: <http://www.bls.gov/oes/current/oes439061.htm#nat>.

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).

If you file your comment on paper, write "Used Car Rule, PRA Comment, P137606," 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 J), 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 www.ftc.gov to read this Notice. 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 November 25, 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>.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2013-23353 Filed 9-24-13; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "*Pretest of the Ambulatory Surgery/Procedure Survey on Patient Safety Culture Questionnaire (Ambulatory Surgery SOPS)*." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on July 8th, 2013 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 25, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395-6974 (attention: AHRQ's desk officer) or by email at OIRA_submission@omb.eop.gov (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

Pretest of the Ambulatory Surgery/Procedure Survey on Patient Safety Culture Questionnaire (Ambulatory Surgery SOPS)

One setting which has demonstrated tremendous growth both in the volume and complexity of procedures being performed is ambulatory surgical and procedure centers (ASCs). ASCs are defined by the Centers for Medicare & Medicaid Services (CMS) as distinct entities that operate exclusively to provide surgical services to patients who do not require hospitalization and are not expected to need to stay in a surgical facility longer than 24 hours (42 CFR 416.2). Many of the services performed in these facilities extend beyond procedures traditionally thought of as surgery, including endoscopy, and injections to treat chronic pain. Currently, there are over 5,300 Medicare-certified ASCs in the U.S., which represents a greater than 54% increase since 2001. In 2007, Medicare paid for more than 6 million surgeries performed in these facilities at a cost of nearly \$3 billion. Recent CMS audits suggest infection control deficiencies in these facilities are widespread. For example, preliminary data from 2011 found that 51 percent of ASCs surveyed had an infection control deficiency; 11 percent were considered very serious deficiencies. These findings are only slightly lower than 2010 audits and a 2008 sample of ASCs in three states.

Given the widespread impact of ASCs on patient safety, the new Ambulatory Surgery/Procedure Survey on Patient Safety Culture (Ambulatory Surgery SOPS) will measure ASC staff perceptions about what is important in their organization and what attitudes and behaviors related to patient safety culture are supported, rewarded, and expected. The survey will help ASCs to identify and discuss strengths and weaknesses of patient safety culture within their individual facilities. They can then use that knowledge to develop appropriate action plans to improve their practices and their culture of patient safety. This survey is designed

for use in ASCs that practice all types of surgical procedures including those that require incisions and less invasive or non-surgical procedures such as gastrointestinal procedures or pain management injections.

This research has the following goals:

- (1) Develop, cognitively test and modify as necessary the Ambulatory Surgery/Procedure Survey on Patient Safety Culture Questionnaire (Ambulatory Surgery SOPS);
- (2) Pretest and modify the questionnaire as necessary, and
- (3) Make the final questionnaire publicly available.

This study is being conducted by AHRQ through its contractor, Health Research & Educational Trust (HRET), and subcontractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the projects' goals the following activities and data collections will be implemented:

- (1) *Cognitive interviews.* One round of cognitive interviews on the Ambulatory Surgery SOPS will be conducted by telephone with 15 respondents from ASCs. The purpose of these interviews is to understand the cognitive processes the respondent engages in when answering a question on the survey and to refine the survey's items and composites. These interviews will be conducted with a mix of physicians, management, nurses, surgical technicians, and administrative staff throughout the U.S. from ASCs with varying characteristics (e.g., size, geographic location, and type of ownership).

- (2) *Pretest for the Ambulatory Surgery SOPS.* The draft questionnaire will be pretested with physicians and staff from 40 ASCs. The purpose of the pretest is to collect data for an assessment of the reliability and construct validity of the survey items and composites, allowing for their further refinement. A site-level point of contact (POC) will be recruited in each ASC to manage the data collection at that organization (compile sample information, distribute surveys, promote survey response, etc.).

- (3) *Dissemination activities.* The final questionnaire will be made publicly available through the AHRQ Web site. This activity does not impose a burden on the public and is therefore not

included in the burden estimates in Exhibit 1.

The information collected will be used to test and improve the draft survey items in the Ambulatory Surgery SOPS. Psychometric analysis will be conducted on the pretest data to examine item nonresponse, item response variability, factor structure, reliability, and construct validity of the items included in the survey. Because the survey items are being developed to measure specific aspects of patient safety culture in the ambulatory surgery setting, the factor structure of the survey items will be evaluated through multilevel confirmatory factor analysis. On the basis of the data analyses, items or factors may be dropped.

The final survey instrument will be made available to the public for use in ASCs to assess their safety culture from the perspectives of their staff. The survey can be used by ASCs to identify

areas for patient safety culture improvement. Researchers are also likely to use the survey to assess the impact of ASC's patient safety culture improvement initiatives such as the implementation of a surgical safety checklist. This survey is an expansion of AHRQ's suite of surveys on patient safety culture, which are available on the AHRQ Web site at (<http://www.ahrq.gov/professionals/quality-patient-safety/surveys/index.html>). Those surveys have been used by thousands of hospitals, nursing homes, medical offices, and pharmacies across the U.S. to assess patient safety culture. The Ambulatory Surgery SOPS contains new and revised questions and composites that more accurately apply to the ambulatory surgery setting.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the

respondents' time to participate in this research. Cognitive interviews will be conducted with 15 ASC staff (approximately three physicians, six nurses, two medical technicians, two administrative managers, and two administrative assistants) and will take about one hour and 30 minutes to complete. The Ambulatory Surgery SOPS will be completed by 529 ASC staff from 40 facilities (about 13 per facility). Each survey will require approximately 15 minutes to complete. A site-level POC will spend approximately 6 hours administering the Ambulatory Surgery SOPS. The total burden is estimated to be 395 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be \$16,173 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Cognitive interviews	15	1	1.5	23
Pretest for the Ambulatory Surgery SOPS	529	1	15/60	132
POC Administration of the survey	40	1	6	240
Total	584	na	na	395

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Cognitive interviews	15	23	\$46.52 ^a	\$1,070
Pretest for the Ambulatory Surgery SOPS	529	132	\$46.04 ^b	\$6,077
POC Administration of the survey	40	240	\$37.61 ^c	\$9,026
Total	584	395	na	\$16,173

^a Based on the weighted average wages for 1 Anesthesiologist (29–1061, \$108.35), 2 Surgeons (29–1067, \$106.48), 2 Administrative Services Managers (11–3011, \$37.61), 6 Registered Nurses (29–1141, \$34.23), 2 Medical and Clinical Laboratory Technicians (29–2030, \$28.90), 1 Licensed Practical or Licensed Vocational Nurse (29–2061, \$21.17), and 1 Office and Administrative Support Workers, All Other (43–9199, \$16.92).

^b Based on the weighted average wages for 150 Registered Nurses, 85 Office and Administrative Support Workers, 85 Medical and Clinical Laboratory Technicians, 70 Surgeons, 50 Licensed Practical/Vocational Nurses, 49 Anesthesiologists, and 40 Administrative Services Managers.

^c Based on the on the average wages for 1 Administrative Services Managers.

* National Occupational Employment and Wage Estimates in the United States, May 2012, "U.S. Department of Labor, Bureau of Labor Statistics" (available at http://www.bls.gov/oes/current/naics4_621400.htm [for outpatient care setting])

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including

hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Dated: September 17, 2013.

Richard Kronick,
AHRQ Director.

[FR Doc. 2013–23299 Filed 9–24–13; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Cogent Patient Safety Organization, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21–b–26, provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be “delisted” by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. AHRQ has accepted a notification of voluntary relinquishment from Cogent Patient Safety Organization, Inc. of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on September 4, 2013.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: <http://www.pso.AHRQ.gov/index.html>.

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: psa@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be “delisted” if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from Cogent Patient Safety Organization, Inc., PSO number P0102, a component entity of Cogent Healthcare, Inc., to voluntarily relinquish its status as a PSO. Accordingly, Cogent Patient Safety Organization, Inc. was delisted effective at 12:00 Midnight ET (2400) on September 4, 2013.

More information on PSOs can be obtained through AHRQ’s PSO Web site at <http://www.pso.AHRQ.gov/index.html>.

Dated: September 13, 2013.

Richard Kronick,

Director.

[FR Doc. 2013–23300 Filed 9–24–13; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-13–0214]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Health Interview Survey (NHIS), (OMB No. 0920–0214, Expiration 3/31/2016)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2014, 2015, and 2016. This voluntary and confidential household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Personal identification information is requested from survey respondents to facilitate linkage of survey data with health related administrative and other records. Each year we collect information from approximately 55,000 households, which contain about 137,500 individuals.

Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year that remains largely unchanged while sponsored supplements vary from year to year. The core set includes sociodemographic characteristics, health status, health care services, and health behaviors. For 2014, supplemental questions will be cycled in pertaining to hearing, arthritis, and heart disease and stroke. Supplemental topics that continue or are enhanced from 2013 will be related

to the Affordable Care Act, food security, children’s mental health, disability and functioning, smokeless tobacco and e-cigarettes, hepatitis screening, immunizations, and computer use. In addition, a Web/CATI multimode follow-back survey will be conducted from sample adult respondents from the 2013 NHIS. The follow-back survey will focus on topics related to the Affordable Care Act including health care access and use, and health insurance coverage and will include Web, telephone, and mail interviews. Questions related to federal and state health insurance marketplaces will be included.

To improve the analytic utility of NHIS data, minority populations are oversampled annually. In 2014, in addition to ongoing sample augmentation procedures, NCHS will introduce a Native Hawaiian and Pacific Islander oversample of 4,000 addresses identified from the 2012 American Community Survey. These individuals and households will be administered the 2014 NHIS questionnaire. Results will be released as a separate file from the regular NHIS.

In accordance with the 1995 initiative to increase the integration of surveys within the DHHS, respondents to the NHIS serve as the sampling frame for

the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally-mandated “Health US” and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, “Healthy People 2020.”

There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent in hours	Total burden in hours
Adult	Screener Questionnaire	10,000	1	5/60	833
Adult Family Member	Family Core	45,000	1	23/60	17,250
Sample Adult	Adult Core	36,000	1	15/60	9,000
Adult Family Member	Child Core (adult family member)	14,000	1	10/60	2,333
Medical Provider	Child/Teen Record Check	8,000	1	5/60	667
Adult Family Member	Supplements	45,000	1	12/60	9,000
Adult Family Member	Multi-mode study	5,000	1	30/60	2,500
Adult Family Member	Native Hawaiian/ Pacific Islander Survey.	4,000	1	60/60	4,000
Adult	Reinterview Survey	5,000	1	5/60	417
Total Burden Hours					46,000

LeRoy A. Richardson,
 Chief, Information Collection Review Office,
 Office of Scientific Integrity, Office of the
 Associate Director for Science, Office of the
 Director, Center for Disease Control and
 Prevention.

[FR Doc. 2013-23302 Filed 9-24-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal Child Support Enforcement Direct Funding Request: 45 CFR 309-Plan.

OMB No.: 0970-0218.

Description: The final rule within 45 CFR part 309, published in the **Federal Register** on March 30, 2004, contains a regulatory reporting requirement that, in order to receive funding for a Tribal IV-D program a Tribe or Tribal organization must submit a plan describing how the Tribe or Tribal organization meets or

plans to meet the objectives of section 455(f) of the Social Security Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. The plan is required for all Tribes requesting funding; however, once a Tribe has met the requirements to operate a comprehensive program, a new plan is not required annually unless a Tribe makes changes to its title IV-D program. Tribes and Tribal organizations must respond if they wish to operate a fully funded program. This paperwork collection activity is set to expire in September, 2013.

Respondents: Tribes and Tribal Organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 309—Plan	60	2	480	57,600.

Estimated Total Annual Burden Hours: 57,600.

Additional Information: Copies of the proposed collection may be obtained by

writing to the Administration for Children and Families, Office of

Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7285, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013-23265 Filed 9-24-13; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-D-0530]

Mobile Medical Applications; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Mobile Medical Applications." The FDA is issuing this guidance to inform manufacturers, distributors, and other entities about how the FDA intends to apply its regulatory authorities to select software applications intended for use on mobile platforms (mobile applications or "mobile apps"). At this time, the FDA intends to apply regulatory requirements to only a small subset of mobile apps referred to in this guidance as mobile medical applications (mobile medical apps).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document

entitled "Mobile Medical Applications" to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993-0002; or to 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. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301-847-8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *For devices regulated by CDRH:* Bakul Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993-0002, 301-796-5528.

For devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301-827-6210.

I. Background

Given the rapid expansion and broad applicability of mobile apps, the FDA is issuing this guidance document to clarify the subset of mobile apps to which the FDA intends to apply its authority. Many mobile apps are not medical devices (meaning such mobile apps do not meet the definition of a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act)), and FDA does not regulate them. Some mobile apps may meet the definition of a medical device but because they pose a lower risk to the public, FDA intends to exercise enforcement discretion over these devices (meaning it will not enforce requirements under the FD&C Act). The majority of mobile apps on the market at this time fit into these two categories.

Consistent with the FDA's existing oversight approach that considers functionality rather than platform, the FDA intends to apply its regulatory oversight to only those mobile apps that

are medical devices and whose functionality could pose a risk to a patient's safety if the mobile app were to not function as intended. This subset of mobile apps the FDA refers to as mobile medical apps.

FDA is issuing this guidance to provide clarity and predictability for manufacturers of mobile medical apps. Should FDA determine at a later date that the policy in this guidance should be changed in light of new information, the agency would follow a public process, including the opportunity for public input, consistent with FDA's good guidance practices (GGP) regulation in 21 CFR 10.115.

In the **Federal Register** of July 21, 2011 (76 FR 43689), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by October 19, 2011. FDA reviewed the comments and revised the guidance, as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on mobile medical applications. 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 statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <http://www.regulations.gov> or <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm>. To receive "Mobile Medical Applications" from CDRH, you may either send an email request to dsmica@fda.hhs.gov to receive an electronic copy of the document or send a fax request to 301-847-8149 to receive a hard copy. Please use the document number 1741 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved information collections 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 part 801 are approved under OMB control number 0910–0485; the collection of information in 21 CFR part 803 are approved under OMB control number 0910–0437; the collections of information in 21 CFR part 806 are approved under OMB control number 0910–0359; the collections of information in 21 CFR part 807 Subpart B are approved under OMB control number 0910–0387; the collections of information in 21 CFR part 807 Subpart E are approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 Subparts B and E are approved under OMB control number 0910–0231; and the collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073.

V. 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>.

Dated: September 19, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–23293 Filed 9–24–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Small Interfering RNA Knock-Down of Cannabinoid-1 Receptor (CB1R) for the Treatment or Prevention of Type-2 Diabetes

Description of Technology: Endocannabinoids (EC) are lipid signaling molecules that act on the same cannabinoid receptors that recognize and mediate the effects of marijuana. Activation of the EC receptor CB1R has been shown to play a key role in the development of obesity and its metabolic consequences, including insulin resistance and type 2 diabetes. Researchers at NIH have now demonstrated in the Zucker diabetic fatty (ZDF) rat model of type-2 diabetes that beta-cell loss is caused by the CB1R-mediated activation of a macrophage-mediated inflammatory response. They have further demonstrated that treatment of ZDF rats with a peripheral CB1R antagonist restores normoglycemia and preserves beta-cell function and that similar results were seen following selective *in vivo* knockdown of macrophage CB1R by daily treatment of ZDF rats with D-glucan-encapsulated CB1R Small interfering RNA (siRNA). Therefore, knock-down of CB1R with siRNA may represent a new method of treating type-2 diabetes or preventing the progression of insulin resistance to overt diabetes.

Potential Commercial Applications: Treatment of obesity, insulin resistance, and diabetes.

Competitive Advantages: A new means of inhibiting the endocannabinoid receptor CB1R.

Development Stage: In vivo data available (animal).

Inventors: George Kunos (NIAAA), Tony Jourdan (NIAAA), Michael P. Czech (UMass Medical School), Myriam Aouadi (UMass Medical School).

Intellectual Property: HHS Reference No. E–103–2013/0—US Application No. 61/839,239 filed June 25, 2013.

Licensing Contact: Jaime M. Greene; 301–435–5559; greenajaime@mail.nih.gov.

Methods for the Treatment of AIDS and Other Retroviral Diseases Using Plant-Derived Compounds

Description of Technology: Human immunodeficiency virus-1 (HIV–1) affects 1.4 million patients in the U.S. and over 33 million worldwide. While highly active antiretroviral therapy (HAART), the current standard of care, is effective in suppressing retroviral activity, cure has not been achieved due to the persistence of latently infected T cells in treated patients. An agent capable of sensitizing this T cell subpopulation concordant with HAART may add significant benefit to individuals with retroviral diseases.

Researchers at the NIH have identified Englerin A and its derivatives as potent and specific activators of viral replication in infected T cells. Use of these compounds in conjunction with existing antiviral therapies has been described for the treatment of AIDS, adult T cell leukemia/lymphoma and other retroviral diseases.

Intellectual property assets available for license include novel compositions of Englerin A along with methods of their use in the treatment of retroviral diseases.

Potential Commercial Applications

- Novel adjuvant therapy for the treatment of retroviral diseases such as AIDS or HTLV-induced leukemia/lymphoma.
- Therapeutic for the management of T lymphocytopenia.

Competitive Advantages

- Englerin A and its derivatives are potent and selective activator of protein kinase C theta in immune cells.
- Compounds are anticipated to have fewer off-target toxicities relative to currently available PKC activators (e.g., interleukins-2 and 7).
- Compounds are optimized for use in combination with clinically available antiviral agents.

Development Stage

- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: Leonard Neckers, Marston Lineham, Carole Sourbier, Jane Trepel, Min-jung Lee, Bradley Scroggins, John Beutler (all of NCI).

Publications

1. Ratnayake R, *et al.* Englerin A, a selective inhibitor of renal cancer cell growth, from *Phyllanthus engleri*. *Org Lett.* 2009 Jan 1;11(1):57–60. [PMID 19061394].

2. Li Z *et al.* A brief synthesis of (-)-englerin A. *J Am Chem Soc.* 2011 May 4;133(17):6553–6. [PMID 21476574].

3. Akee R, *et al.* Chlorinated englerins with selective inhibition of renal cancer cell growth. *J Nat Prod.* 2012 Mar 23;75(3):459–63. [PMID 22280462].

4. Sourbier C, *et al.* Englerin A stimulates PKC theta to inhibit insulin signaling and to simultaneously activate HSF1: pharmacologically induced synthetic lethality. *Cancer Cell.* 2013 Feb 11;23(2):228–37. [PMID 23352416].

Intellectual Property: HHS Reference No. E–201–2012/0—US Application No. 61/726,975 filed November 15, 2012.

Related Technologies

- HHS Reference No. E–064–2008—“Englerin A: A Novel Renal Cancer Therapeutic Isolated from an African Plant.”

- HHS Reference No. E–042–2012—“Use of Englerin A for the Treatment of Diabetes, Obesity and Other Diseases.”
Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; vathyams@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute Molecular Targets Development Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize epoxy-guaiane derivatives for retroviral therapy. For collaboration opportunities, please contact John D. Hewes, Ph.D. at hewesj@mail.nih.gov.

Development of Immune System Tolerance for the Treatment of Autoimmune Disease

Description of Technology: The present invention provides a therapeutic method for the treatment of autoimmune or autoinflammatory diseases by first breaking down the dysregulated immune system and then reprogramming the immune system to restore tolerance to the patient's self-antigens by induction of antigen specific regulatory T cells. The inventors have shown that only with the combination of apoptosis, phagocytes, and antigen can antigen-specific regulatory T cells (T_{reg}) cells be optimally generated to develop long-term immune tolerance. This strategy for developing immune tolerance can be applied to the treatment of autoimmune diseases.

Potential Commercial Applications: Treatment of autoimmune disease.

Competitive Advantages: This technology represents a novel means of treating autoimmune disease.

Development Stage

- Early-stage.

- In vivo data available (animal).
Inventors: Wanjun Chen (NIDCR), Shimpei Kassagi, Pin Zhang.
Intellectual Property: HHS Reference No. E–186–2009/0—US Provisional Application No. 61/844,564 filed July 10, 2013.

Licensing Contact: Jaime M. Greene; 301–435–5559; greenajaime@mail.nih.gov.

Dated: September 19, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–23231 Filed 9–24–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

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 General Medical Sciences Special Emphasis Panel; MIDAS Review Meeting.

Date: October 11, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892–4874, 301–594–3607, pikbr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 19, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–23210 Filed 9–24–13; 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, PAR Panel: Tobacco Control Regulatory Research.

Date: October 15–16, 2013.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, rubertm@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Drug Discovery for the Nervous System Study Section.

Date: October 17, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, custerm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Academic Research Enhancement Award.

Date: October 18, 2013.

Time: 8:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301-435-1717, henryrr@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: Molecular Probes.

Date: October 18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435-1164, custerm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Understanding and Promoting Health Literacy.

Date: October 18, 2013.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301-435-1717, henryrr@mail.nih.gov.
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 19, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-23211 Filed 9-23-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 24-25, 2013.

Closed: October 24, 2013, 9:00 a.m. to 9:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Open: October 24, 2013, 9:30 a.m. to 9:50 a.m.

Agenda: Reports from Institute staff.

Place: National Institutes of Health, Building 31, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Closed: October 24, 2013, 10:00 a.m. to 3:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Closed: October 25, 2013, 8:30 a.m. to 1:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Andrew J. Griffith, Ph.D., MD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 1A13, Rockville, MD 20850, 301-496-1960, griffita@nidcd.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: <http://www.nidcd.nih.gov/about/groups/bsc/>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: September 19, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-23209 Filed 9-24-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review, Group Neurological Sciences and Disorders C.

Date: October 17-18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-0660, benzingw@mail.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review, Group Neurological Sciences and Disorders A.

Date: October 24-25, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Renaissance Arlington Capital View, 2800 South Potomac Ave, Arlington, VA 22202.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-402-0288, Natalia.Strunnikova@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review, Group Neurological Sciences and Disorders B.

Date: October 28-29, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, neuhuber@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 19, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-23233 Filed 9-24-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH

SCIENCES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: October 20-22, 2013.

Closed: October 20, 2013, 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: The Radisson Hotel Research Triangle Park, 150 Park Drive, Durham, NC 27709.

Open: October 21, 2013, 8:30 a.m. to 9:20 a.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: October 21, 2013, 9:20 a.m. to 11:15 a.m.

Agenda: Scientific Presentations.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 21, 2013, 11:15 a.m. to 1:00 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: October 21, 2013, 1:00 p.m. to 2:30 p.m.

Agenda: Poster Session.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 21, 2013, 2:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: October 21, 2013, 3:00 p.m. to 4:55 p.m.

Agenda: Scientific Presentations.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 21, 2013, 5:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 21, 2013, 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: The Radisson Hotel Research Triangle Park, 150 Park Drive, Durham, NC 27709.

Open: October 22, 2013, 8:30 a.m. to 9:20 a.m.

Agenda: Scientific Presentation.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 22, 2013, 9:20 a.m. to 11:30 a.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Darryl C. Zeldin, M.D., Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Health Sciences, NIH, 111 TW Alexander Drive, Maildrop A2-09, Research Triangle Park, NC 27709, 919-541-1169, zeldin@niehs.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 19, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-23234 Filed 9-24-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Cultivating Health and Aging Researchers.

Date: October 16, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301-402-7705, JOHNSONJ9@NIA.NIH.GOV.

Name of Committee: National Institute on Aging Special Emphasis Panel; Therapeutics for Prion Disease.

Date: November 7, 2013.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadonian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, PARSADANIANA@NIA.NIH.GOV. (Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: September 19, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-23232 Filed 9-24-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3365-EM; Docket ID FEMA-2013-0001]

Colorado; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Colorado (FEMA-3365-EM), dated September 12, 2013, and related determinations.

DATES: *Effective Date:* September 15, 2013.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of September 12, 2013.

Adams, Arapahoe, Broomfield, Clear Creek, Denver, Fremont, Jefferson, Logan, Morgan, Pueblo, Washington, and Weld Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013-23323 Filed 9-24-13; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3365-EM; Docket ID FEMA-2013-0001]

Colorado; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of Colorado (FEMA-3365-EM), dated September 12, 2013, and related determinations.

DATES: *Effective Date:* September 13, 2013.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of William J. Doran III as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013-23314 Filed 9-24-13; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4145-DR; Docket ID FEMA-2013-0001]

Colorado; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA-4145-DR), dated September 14, 2013, and related determinations.

DATES: *Effective Date:* September 19, 2013.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 14, 2013.

Clear Creek, El Paso, and Jefferson Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–23317 Filed 9–24–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4145–DR; Docket ID FEMA–2013–0001]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4145–DR), dated September 14, 2013, and related determinations.

DATES: *Effective Date:* September 15, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major

disaster by the President in his declaration of September 14, 2013.

Adams, Larimer, and Weld Counties for Individual Assistance.

Adams, Larimer, and Weld Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–23320 Filed 9–24–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4143–DR; Docket ID FEMA–2013–0001]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4143–DR), dated September 4, 2013, and related determinations.

DATES: *Effective Date:* September 4, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 4, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms and flooding during the period of August 8–14, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth K. Suiso, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Benton, Boone, Carroll, Madison, Marion, and Newton Counties for Public Assistance.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013-23312 Filed 9-24-13; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4144-DR; Docket ID FEMA-2013-0001]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-4144-DR), dated September 6, 2013, and related determinations.

DATES: *Effective Date:* September 6, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 6, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, straight-line winds, and flooding during the period of August 2-14, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75

percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Barry, Camden, Cedar, Dade, Dallas, LaClede, Maries, McDonald, Miller, Osage, Ozark, Phelps, Pulaski, Shannon, Taney, Texas, Webster, and Wright Counties for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentialy Declared Disaster Areas; 97.049, Presidentialy Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentialy Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013-23296 Filed 9-24-13; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2008-0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet on October 17-18, 2013. The meeting will be open to the public.

Authority: 5 U.S.C. App.; 15 U.S.C. 2206(j).

DATES: The meeting will take place on Thursday, October 17, 8:30 a.m. to 11:30 a.m. EDT and on Friday, October 18, 09:30 a.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: The meeting will be held at the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the public who wish to obtain details on how to gain access to the facility and directions may contact Cindy Wivell as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business October 9, 2013. A picture identification is needed for access. Members of the public may also participate by teleconference and may contact Cindy Wivell to obtain the call-in number and access code. For information on services for individuals with disabilities or to request special assistance, contact Cindy Wivell as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Comments must be submitted in writing no later than October 9, 2013, and must be identified by docket ID FEMA-2008-0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Cindy Wivell, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket ID for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>. Handouts for the meeting will be posted at <http://www.usfa.fema.gov/nfa/about/bov.shtm> as soon as they are available.

There will be a 10-minute comment period after each agenda item; each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Cindy Wivell to register as a speaker.

FOR FURTHER INFORMATION CONTACT:

Alternate Designated Federal Officer:
Denis G. Onieal, telephone (301) 447-1117.

Logistical Information: Cindy Wivell, telephone (301) 447-1157, fax (301) 447-1834, and email Cindy.Wivell@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (NFA) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, of the operation of the NFA and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines NFA programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the NFA to determine the adequacy of the NFA's facilities, and examines the funding levels for NFA programs. The Board submits an annual report through the United States Fire Administrator to the Administrator of FEMA, in writing. The report provides detailed comments and recommendations regarding the operation of the NFA.

Agenda

On the first day of the meeting, the Board will swear in new members, select a Chairperson and Vice Chairperson for Fiscal Year 2014, and review and approve the minutes of the May 15, 2013, teleconference meeting.

The Board will then review and give feedback on NFA program activities, including: NFA Online, the NFA's web-based learning platform for distance learning courses; NFA's mediated course deliveries, which provide NFA training through an instructor facilitated web-based learning environment; NFA's course material download for the Regions and States, which enables direct access to NFA course materials through a web-based interface; NFA's Bring-Your-Own-Device initiative, which allows students to download the student manual to their own personal electronic devices and eliminates the use of paper-based student materials; NFA's curriculum for emergency medical services; and NFA's curriculum Enterprise Shared Workspace, a database system developed to capture and track course development and

revision activities. The Board will also review and give feedback on NFA's status of course development at the end of FY 2013; NFA's curriculum development plan for the FY 2014 curriculum; and NFA's Smart Practices/Lessons Learned Report to Congress, which provides Congress with a snapshot of the lessons learned and best practices that have been incorporated into the NFA's curriculum and program areas.

The Board will discuss the Professional Development Subcommittee activities, including the Professional Development Symposium that will bring national training and education audiences together for their annual conference and support initiatives, the Fire and Emergency Services Higher Education (FESHE)/Professional Development Subcommittee restructuring, and the FESHE Recognition Update that will include a list of the colleges and universities that have been approved and that have adopted the FESHE curriculum.

On the second day, the Board will receive updates on U.S. Fire Administration data, research, and response support initiatives, and discuss deferred maintenance and capital improvements on the National Emergency Training Center (NETC) campus and FY 2014 Budget Request/Budget Planning. The Board will also engage in an annual report working session.

Dated: September 20, 2013.

Denis G. Onieal,

*Superintendent, National Fire Academy,
United States Fire Administration, Federal
Emergency Management Agency.*

[FR Doc. 2013-23376 Filed 9-24-13; 8:45 am]

BILLING CODE 9111-23-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5683-N-83]

**30-Day Notice of Proposed Information
Collection: Federal Labor Standards
Questionnaire(s); Complaint Intake
Form**

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The

purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 25, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 26, 2013.

A. Overview of Information Collection

Title of Information Collection:

Federal Labor Standards

Questionnaire(s); Complaint Intake Form.

OMB Approval Number: 2501-0018.

Type of Request: Extension without of a currently approved collection.

Form Number: HUD-4730, HUD 4730-SP, HUD-4731, HUD-4730-E.

Description of the need for the information and proposed use: HUD-4730, 4730E and 4730SP, Federal Labor Standards Questionnaires, will be used by HUD and agencies administering HUD programs to collect information from laborers and mechanics employed on HUD-assisted projects. Employers are required to submit weekly certified payroll reports in order to demonstrate and attest to their compliance with Federal labor standards. The information collected on questionnaires is primarily used to determine whether payroll information supplied by employers is valid. Testing employer data can disclose violations that may be concealed or that are otherwise not apparent to the agency. Information

collected on the HUD 4731, Federal Labor Standard Complaint Intake form, will be used by HUD and agencies administering HUD programs to collect information from complainants alleging violations of Federal labor standards on HUD assisted projects. The information collected is primarily used in the conduct of investigations into the allegations. Generally, enforcement actions, including investigations, are geared to the respondent's benefit, that

is, to determine whether the respondent was underpaid and to ensure the payment of wage restitution to the respondent, if so. These forms have been crafted to focus on essential information, to make it easy to read and complete, and to best capture the information needed for HUD to competently enforce Federal labor standards and to protect workers' rights to prevailing wages.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses: 2,000.

Frequency of Response: 1. Average Hours per Response: .5. Total Estimated Burdens: 1,000. Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD-4730, 4730E, 4730SP	2,500	1	1	5	1250	10.00	12,500
Total .....	.....	.....	.....	.....	.....	.....	.....

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 20, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013-23374 Filed 9-24-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5683-N-84]

30-Day Notice of Proposed Information Collection: Semi-Annual Labor Standards Enforcement Report—Local Contracting Agencies (HUD Programs)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: October 25, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. Persons with hearing or speech

impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 26, 2013.

A. Overview of Information Collection

Title of Information Collection: Semi-annual Labor Standards Enforcement Report—Local Contracting Agencies (HUD Programs).

OMB Approval Number: 2501-0019.

Type of Request: Extension without of a currently approved collection.

Form Number: HUD-4710.

Description of the need for the information and proposed use: The information collected is used by HUD to compile a report to DOL required by DOL regulations at 29 CFR 5.7(b). HUD consolidates the data collected from respondents and submits the data to DOL in its report.

Estimated Number of Respondents: 4500. *Estimated Number of Responses:* 9000. *Frequency of Response:* 2. *Average Hours per Response:* 2. *Total Estimated Burdens:* 18,000. Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD-4710	4500	2	2	2	18000	34.34	618,120

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
 - (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
 - (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
 - (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 20, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013-23349 Filed 9-24-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5683-N-85]

30-Day Notice of Proposed Information Collection: Family Self-Sufficiency Program (FSS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 25, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 26, 2013.

A. Overview of Information Collection

Title of Information Collection: Family Self-Sufficiency Program (FSS).

OMB Approval Number: 2577-0178.

Type of Request: Revision of a currently approved collection.

Form Number: HUD-52650, HUD-52651, HUD-52652, HUD-50058, HUD-96011, HUD-96010, HUD-2880, HUD-2994-A, HUD-2991, HUD-52752, HUD-52755, SF-424, SF-LLL, HUD-1044.

Description of the need for the information and proposed use: The FSS program, which was established in the National Affordable Housing Act of 1990, promotes the development of local strategies that coordinate the use of public housing assistance and assistance under the Section 8 rental certificate and voucher programs (now known as the Housing Choice Voucher Program) with public and private resources to enable eligible families to increase earned income and financial literacy, reduce or eliminate the need for welfare assistance, and make progress toward economic independence and self-sufficiency. Public Housing Agencies consult with local officials to develop an Action Plan, enter into a Contract of Participation with each eligible family that opts to participate in the program, compute an escrow credit for the family, report annually to HUD on implementation of the FSS program, and complete a funding application for the salary of an FSS program coordinator.

Respondents (i.e. affected public): Public Housing Agencies, Tribes/ Tribally Designated Housing Entities, State or Local Governments.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hours per response	Total hours
SF424—Application for Federal Assistance	1,000	1	1,000	0.75	750
SF LLL—Disclosure of Lobbying Activities	40	1	40	0.17	7
HUD 2880—Applicant/Recipient/Disclosure/Update Form (OMB No. 2510-0011)	1,000	1	1,000	0	0
HUD 96011—Facsimile Transmittal (OMB No. 2535-0118)	1,000	1	1,000	0	0
HUD-2991—Certification of Consistency with the Consolidated Plan (OMB No. 2506-0112)	1,000	1	1,000	0	0
HUD 52752—Certification of Consistency with the Indian Housing Plan	15	1	15	0.25	4
HUD-52755—Sample Contract Admin. Partnership Agreement	40	1	40	0.17	7
HUD-2994—A You are Our Client (OMB No. 2535-0116)	750	1	750	0	0
HUD-52651—FSS Application	1,000	1	1,000	1	1,000

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hours per response	Total hours
HUD 96010—Logic Model (OMB No. 2535–0114)	1,000	1	1,000	0	0
Subtotal (Application) .....	.....	.....	.....	2.1	1,768
Action Plan	10	1	10	10	100
HUD–52650—Contract of Participation	900	10	9,000	.25	2,250
HUD–52652—Escrow Account Credit Worksheet	750	50	37,500	.85	31,875
HUD–1044—Grant Agreement*	250	1	250	N/A	N/A
Annual Report (Narrative)	900	1	900	1	900
HUD 96010—Logic Model (OMB No. 2535–0114)	900	1	900	0	0
HUD–50058—Family Report (OMB No. 2577–0083)	900	50	45,000	0	0
Subtotal (Program Reporting/Recordkeeping) .....	.....	.....	.....	12.1	35,125
Total .....	.....	.....	.....	14.2	36,893

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 20, 2013.

Colette Pollard,

*Department Reports Management Officer
Office of the Chief Information Officer.*

[FR Doc. 2013–23348 Filed 9–24–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–12]

60-Day Notice of Proposed Information Collection: Public Housing Energy Audits and Utility Allowances

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 25, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT:

Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Energy Audits and Utility Allowances.

OMB Approval Number: 2577–0062.

Type of Request: Reinstatement, with change, of previously approved collection.

Form Number: HUD 50078.

Description of the need for the information and proposed use: 24 CFR 965.301, Subpart C, Energy Audit and Energy Conservation Measures, requires PHAs to complete energy audits once every five years and undertake cost-effective energy conservation measures. 24 CFR 965, Subpart E, Resident Allowances for Utilities, requires PHAs to establish, review and revise utility allowances for PHA-furnished utilities and for resident-purchased utilities.

Respondents (i.e. affected public): Public Housing Agencies.

Section reference	Number of respondents	Number of responses per respondent	Total annual number of responses	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
965.302—Energy Audits	680	1	680	3.5	2,380
965.308—Energy Performance Contracts	22	1	22	100	2,200
965.402—Benefit/Cost Analysis	5	1	1	3	15
965.502—Establish utility allowances	5	1	5	20	100
965.507—Review utility allowances	¹ 3,100	1	3,100	2	6,200
965.507—Revise utility allowances	² 1,240	1	1,240	20	24,800
965.506—Establishment of Surcharges for Excess Consumption	200	1	200	1	200
Optional Benchmarking (50078 available for this purpose)	350	1	350	1.5	525
965–508-Individual Relief Criteria	1,000	1	1,000	1	1,000
Total Paperwork Burden for OMB Control #2577–0062					37,420

¹ This is the total number of PHAs covered under this statute.

² This number reflects 40% of all Public Housing Agencies; this is the estimated number of housing agencies that revise their utility allowances, annually.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 19, 2013.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2013–23344 Filed 9–24–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[OMB Control No. 1084–0033; XXXD4523WC DWDFSE000.3V0000 DS68664000 DP.BCQSO.13DOIC3Y]

Proposed Renewal of Information Collection: Private Rental Survey

AGENCY: Office of Acquisition and Property Management, Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior, is announcing its intention to request renewal approval for the collection of information for “Private Rental Survey” OMB Control No. 1084–0033. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by October 25, 2013, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1084–0033), by telefax at (202) 395–5806 or via email to *OIRA_submission@omb.eop.gov*. Also, please send a copy of your

comments to Doug Pokorney, Quarters Rental Program Manager, 7301 W. Mansfield Ave, Denver, CO 80235, or fax to: 303–969–6634, or by email to *Doug_B_Pokorney@ibc.doi.gov*. Individuals providing comments should reference “Private Rental Survey” OMB Control No. 1084–0033.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection or to obtain a copy of the collection instrument, please write or call Doug Pokorney, Quarters Rental Program Manager, 7301 W. Mansfield Ave, Denver, CO 80235, or fax to: 303–969–6634, or by email to *Doug_B_Pokorney@ibc.doi.gov*. To see a copy of the entire ICR submitted to OMB, go to: *http://www.reginfo.gov* and select Information Collection Review, Currently Under Review.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–131), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Acquisition and Property Management has submitted to OMB for renewal.

Public Law 88–459 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the

rental, utility charges, and charges for related services to occupants of Government Furnished Housing (GFH) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, the Department of the Interior, Office of the Secretary, Interior Business Center (on behalf of the Office of Acquisition and Property Management), conducts housing surveys in support of employee housing management programs for the Departments of the Interior (DOI), Agriculture, Commerce, Homeland Security, Justice, Transportation, Health and Human Services, and Veterans Affairs. In this survey, two collection forms are used: OS-2000 covering "Houses—Apartments—Mobile Homes," and OS-2001 covering "Trailer Spaces."

This collection of information provides data that is essential for DOI and the other Federal agencies to manage GFH in accordance with the requirements of OMB Circular A-45 (Revised). If this information were not collected from the public, DOI and the other Federal agencies providing GFH would be required to use professional real estate appraisals of private market rental costs, again, in accordance with OMB Circular A-45.

II. Data

(1) *Title:* Private Rental Survey.
OMB Control Number: 1084-0033.
Current Expiration Date: September 30, 2013.

Type of Review: Information Collection Renewal.

Affected Entities: Individuals or households, Businesses and other for-profit institutions.

Estimated annual number of respondents: 1,700 for OS-2000 and 175 for OS-2001.

Frequency of response: Average 1.99 responses for OS-2000 and 1.26 responses for OS-2001.

(2) *Annual reporting and record keeping burden:*

Total annualized reporting per response: 6 minutes for form OS-2000 and 4 minutes for form OS-2001.

Total annualized reporting: 353 hours.

(3) *Description of the need and use of the information:* This information collection provides the data that enables DOI to determine open market rental costs for GFH. These rates in turn enable DOI and other Federal agencies to set GFH rental rates in accordance with the requirements of OMB Circular A-45 (Revised).

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice

soliciting comments on the information collection was published on July 8, 2013 (78 FR 40761). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques.

"Burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: September 9, 2013.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 2013-23270 Filed 9-24-13; 8:45 am]

BILLING CODE 4310-RK-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-ES-2013-N212;
FXES1113060000D2-123-FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

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 applications to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by October 25, 2013.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD-ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE-XXXXXX).

- *Email:* permitsR6ES@fws.gov.

Please refer to the respective permit number (e.g., Permit No. TE-XXXXXX) in the subject line of the message.

- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486-DFC, Denver, CO 80225.

- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236-4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Permit Coordinator, Ecological Services, (303) 236-4212 (phone); permitsR6ES@fws.gov (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with 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 17, the Act provides for permits and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the

permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) 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.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE046427

Applicant: Landry's Downtown Aquarium, Curator of Fish, Inverts and Herps, 700 Water Street, Denver, CO.

The applicant requests an amendment to hold gila topminnow (*Poeciliopsis occidentalis*) and bocaccio (*Sebastes paucispinis*) in aquaria upon donation and transfer from other accredited facilities for public display and education for the purpose of enhancing the species' survival. The applicant requests an extension of their current permit to 2018 to hold bonytail (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus Lucius*), humpback chub (*Gila cypha*), razorback sucker (*Xyrauchen texanus*), desert pupfish (*Cyprinodon macularius*), green sea turtle (*Chelonia mydas*), and white sturgeon (*Acipenser transmontanus*) for public display and education for the purpose of enhancing the species' survival.

Permit Application Number TE98300A

Applicant: Amni Opes Institute, LLC, 21112 Limestone Avenue, Bend, OR.

The applicant requests a permit to take (harass by survey) pallid sturgeon (*Scaphirhynchus albus*), white sturgeon (*Acipenser transmontanus*), razorback sucker (*Xyrauchen texanus*), bonytail chub (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus Lucius*), and humpback chub (*Gila cypha*) in conjunction with population monitoring activities in Colorado and Montana for the purpose of enhancing the species' survival.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

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 18, 2013.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013-23279 Filed 9-24-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-HQ-IA-2013-N218;
FXIA1671090000P5-123-FF09A30000]**

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before October 25, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or email DMAFR@fws.gov.

FOR FURTHER INFORMATION CONTACT:

Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, “Delivering an Efficient, Effective, and Accountable Government,” and the President’s Memorandum to the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Arthur Bullard, Colorado City, TX; PRT-15466B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for scimitar-horned oryx (*Oryx dammah*) to enhance the species’ propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Arthur Bullard, Colorado City, TX; PRT-15405B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess for scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities over a 5-year period.

Applicant: Volusia Co. Marine Science Center, Ponce Inlet, FL; PRT-11850B

The applicant requests a permit to export a green sea turtle (*Chelonia mydas*) which was removed from the wild in 2011 due to a boat strike and is now non-releasable, to Merlin Entertainments’ Weymouth SeaLife Park, Weymouth, England, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael Van Ambrose, Sugar Land, TX; PRT-13861B

Applicant: Douglas Haywood, Las Cruces, NM; PRT-10614B

Applicant: William Sample, Shreveport, LA; PRT-95494B

Applicant: Chris Peyerck, Shelby Township, MI; PRT-15499B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013-23217 Filed 9-24-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX13MB00B98]

Agency Information Collection Activities: Notice of an Extension of an Information Collection Proposed Information Collection; Nonindigenous Aquatic Species Sighting Reporting Form

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028-0098).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2013.

DATES: You must submit comments on or before November 25, 2013.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648-7197 (fax); or dgovoni@usgs.gov (email). Please

reference “Information Collection 1028-0098” in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Pam Fuller at (352) 264-3481 or pfuller@usgs.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

America is under siege by many harmful non-native species of plants, animals, and microorganisms. More than 6,500 nonindigenous species are now established in the United States, posing risks to native species, valued ecosystems, and human and wildlife health. These invaders extract a huge cost. The current annual environmental, economic, and health-related costs of invasive species exceed those of all other natural disasters combined.

USGS plays an important role in federal efforts to combat invasive species in natural and semi-natural areas through early detection and assessment of newly established invaders, monitoring of invading populations; improving understanding of the ecology of invaders and factors in the resistance of habitats to invasion. USGS provides the tools, technology, and information supporting efforts to prevent, contain, control, and manage invasive species nationwide. USGS also develops methods for compiling and synthesizing accurate and reliable data and information on invasive species, and the development of information products to meet user needs, for inclusion in a distributed and integrated web-based information system.

As part of the USGS Invasive Species Program, the Nonindigenous Aquatic Species (NAS) database (<http://nas.er.usgs.gov>) functions as a repository and clearinghouse for occurrence information on nonindigenous aquatic species from across the United States. It contains locality information on more than 1,100 species of vertebrates, invertebrates, and vascular plants introduced since 1850. Taxa include foreign species as well as those native to North America that have been transported outside of their natural range. The NAS Web site provides immediate access to new occurrence records through a real-time interface with the NAS database. Visitors to the Web site can use a set of predefined queries to obtain lists of species according to state or hydrologic basin of interest. Fact sheets, distribution maps, and information on new occurrences are continually posted and updated. Dynamically generated species distribution maps show the spatial accuracy of the locations reported,

population status, and links to more information about each report.

Information is collected from the public regarding the distribution of nonindigenous aquatic species, primarily fish, in open waters of the United States. This is vital information for early detection and rapid response for the possible eradication of organisms that may be considered invasive in a natural environment such as a lake, river, stream, or pond. Because it is not possible for USGS scientists to monitor all open waters for harmful nonindigenous organisms, the public can help by serving as the “eyes and ears” for the USGS’s Nonindigenous Aquatic Species Database Program.

The USGS does not actively solicit this information. Participation in the reporting process is completely voluntary. Members of the public who wish to report the occurrence of a suspected nonindigenous aquatic species, usually encountered through fishing or some other outdoor recreational activity, may fill out and submit a form (<http://nas.er.usgs.gov/SightingReport.aspx>) posted on our Web site. The information requested includes type of organism, date and location of sighting, photograph(s) if available, and basic observer information (to allow the USGS to contact the observer in the event additional information is needed, such as the color markings and size of the specimen collected or observed, to verify the identity of the organism).

II. Data

OMB Control Number: 1028–0098.

Title: Nonindigenous Aquatic Species Sighting Reporting Form.

Type of Request: Extension of a currently approved collection.

Affected Public: State and local government employees and private individuals.

Respondent’s Obligation: None; voluntary.

Frequency of Collection: Occasional.

Estimated Annual Number of

Respondents: 400.

Estimated Total Annual Responses: 400.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden

Hours: 67 hours.

Estimated Reporting and Recordkeeping “Non-Hour Cost” Burden: None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

III. Request for Comments

We invite comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. 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 view, we cannot guarantee that we will be able to do so.

Dated: September 18, 2013.

Anne Kinsinger,

Associate Director for Biolog U.S. Geological Survey.

[FR Doc. 2013–23284 Filed 9–24–13; 8:45 am]

BILLING CODE 4310–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[13XL1109AF LLWO260000
L1060000.HG0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information from those who wish to adopt and obtain title to wild horses and burros. The Office of Management and Budget (OMB) has assigned control number 1004–0042 to this information collection.

DATES: Please submit comments on the proposed information collection by November 25, 2013.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate “Attn: 1004–0042” regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT:

Sally Spencer, at 202–912–7265.

Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Ms. Spencer.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency’s burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Protection, Management, and Control of Wild Horses and Burros (43 CFR part 4700).

OMB Control Number: 1004-0042.

Summary: This notice pertains to the collection of information that enables the BLM to administer its private maintenance (i.e., adoption) program for

wild horses and burros. The BLM uses the information to determine if applicants are qualified to provide humane care and proper treatment to wild horses and burros in compliance with the Wild Free-Roaming Horses and Burros Act (16 U.S.C. 1331-1340).

Frequency of Collection: On occasion.

Forms: Form 4710-10, Application for Adoption of Wild Horse(s) or Burro(s).

Description of Respondents: Those who wish to adopt and obtain title to wild horses and burros.

Estimated Annual Responses: 7,124.

Estimated Annual Burden Hours: 1,226.

Estimated Annual Non-Hour Costs: \$1,850.

The estimated annual burdens are itemized in the following table:

Type of response	Number of responses	Time per response (minutes)	Total hours (column B × column C)
A.	B.	C.	D.
Application for Adoption of Wild Horse(s) or Burro(s), 43 CFR 4750.3-1 and 4750.3-2, Form 4710-10	7,000	10	1,167
Supporting Information and Certification for Private Maintenance of More Than Four Wild Horses or Burros, 43 CFR 4750.3-3	12	10	2
Request to Terminate Private Maintenance and Care Agreement, 43 CFR 4750.4-3	99	30	50
Request for Replacement Animals or Refund, 43 CFR 4750.4-4	13	30	7
Totals	7,124	.....	1,226

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2013-23342 Filed 9-24-13; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV930000.L1430000.EU0000 241A; N-85116; 13-08807; MO# 4500053892; TAS: 14X5260]

Notice of Realty Action: Modified Competitive Sealed-Bid Sale of Public Land at Schoolhouse Butte (N-85116), Humboldt County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer by modified competitive sealed-bid sale approximately 440 acres in the Desert Valley area of Humboldt County, Nevada, at no less than the fair market value (FMV) of \$44,000. The sale will be conducted pursuant to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and BLM land sale and mineral conveyance regulations.

DATES: The BLM must receive written comments regarding the proposed sale on or before November 12, 2013. The BLM will accept sealed bids for the offered parcel until November 25, 2013 at 4:30 p.m., Pacific Time (PT), at the

Winnemucca District Office. If the BLM determines to conduct the sale, the sealed bids would be opened on November 25, 2013 at the Winnemucca District Office at 9:00 a.m., PT.

ADDRESSES: Mail written comments regarding the proposed sale, as well as sealed bids, to the BLM Field Manager, Black Rock Field Office, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445.

FOR FURTHER INFORMATION CONTACT: Julie McKinnon, Realty Specialist at email: julie_mckinnon@blm.gov, phone: 775-623-1734 or at the address in the

ADDRESSES section. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The public lands proposed for sale include 11 parcels which will be sold as one unit. The lands are approximately 40 miles northwest of Winnemucca, Nevada, and are legally described as:

Mount Diablo Meridian, Nevada

T. 38 N., R. 32 E.,
 Sec. 16, N¹/₂SW¹/₄, SE¹/₄SW¹/₄, SW¹/₄SE¹/₄;
 Sec. 17, NE¹/₄SE¹/₄;
 Sec. 21, E¹/₂NE¹/₄, NW¹/₄NE¹/₄, NE¹/₄NW¹/₄, S¹/₂SE¹/₄.

The above described lands contain 440 acres, more or less, in Humboldt County, Nevada.

The identified lands are not required for any Federal purpose and are identified as suitable for disposal and are in compliance with the Paradise-Denio Management Framework Plan approved July 9, 1982, Paradise-Denio, Sonoma-Gerlach Lands Amendment approved January 15, 1999, and the 2012-01 Paradise-Denio, Sonoma Gerlach Lands Amendment Plan Maintenance documentation, which clarifies the parcel identification language in the previously approved 1999 Paradise-Denio, Sonoma-Gerlach Lands Plan Amendment.

A Decision Record and a Finding of No Significant Impact was signed July 20, 2010, for Environmental Assessment (EA) DOI-BLM-W010-2010-0006-EA which analyzed the direct, indirect and cumulative impacts of the proposed sale. Three responses were received on the EA with suggested clarifications which were incorporated in the document.

An improved county gravel road bisects those parcels in sections 16 and 17, otherwise the subject property and portions of the parcels do not have legal access or an authorized access right-of-way. Humboldt County has a site right-of-way for a man camp and water well to be used for domestic purposes, for times when they are performing road work in the area.

Due to the remoteness of these parcels, their proximity to DeLong Ranches private property, and a lack of access via a county road or authorized right-of-way to all of the parcels, it was determined a modified competitive sale

would be the appropriate method of sale.

Delong Ranches, Inc., owns the abutting properties on the north, south, and west boundaries of the parcels. The parcels are within the Jackson Mountain grazing allotment in which the designated bidder has an active livestock grazing permit. In consideration of the adjoining landowner and historical uses of the parcel, the authorized officer has identified Delong Ranches, Inc., as the designated bidder for this proposed sale.

The use of the modified competitive sale method is consistent with 43 CFR 2711.3-2(a)(1)(i). Public lands may be offered for sale using modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies. Modified competitive bidding includes, but is not limited to, offering designated bidders the right to meet the highest valid bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions. Factors to be considered in determining when modified competitive procedures shall be used include, but are not limited to, the needs of State and/or local government, adjoining landowners, historical users, and other needs for the parcel. This notice specifies the procedures for and method of modified competitive bidding, and a statement indicating the purpose or objective of the bidding procedures.

Sealed bids for the sale must include an amount not less than 20 percent of the total bid in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof, and made payable to the Bureau of Land Management. Personal checks will not be accepted. Sealed bid envelopes must be clearly marked on the lower left corner with "SEALED BID BLM LAND SALE" and the identification number "BLM SERIAL NUMBER N-85116." The bid envelope must also contain the completed BLM form, Certificate of Eligibility, stating the name, mailing address, and phone number of the entity/person making the bid.

Sealed bids will be opened and recorded to determine the high bidder. The highest qualifying bidder among the qualified bids received for the sale will be declared. The modified competitive sale process allows the designated bidder the opportunity to meet the high bid.

The designated bidder or their authorized representatives must be present at the bid opening. Should the

designated bidder appoint a representative for this sale, they must submit in writing a notarized document identifying the level of capacity given to their designated representative. This document must be signed by both parties. The designated bidder or their authorized representative will have the opportunity to meet and accept the high bid as the purchase price of the parcel or to refuse that offer immediately following the bid opening. Should the designated bidder or their authorized representative refuse that offer, the high bid received through sealed bid will be declared the successful bid in accordance with regulations at 43 CFR 2711.3-2(c). Should the designated bidder meet the highest valid bid, a 20 percent deposit immediately following the close of the sale must be submitted in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof, and made payable to the Bureau of Land Management. Acceptance or rejection of any offer to purchase will be in accordance with the procedures set forth in 43 CFR 2711.3.1-(f) and (g) of this subpart.

All funds submitted with sealed bids will be returned to the unsuccessful bidders upon presentation of photo identification at the designated area.

The successful bidder will be allowed 180 days from the date of the sale to submit the remainder of the full bid price in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof, and made payable to the Bureau of Land Management. Personal checks will not be accepted. Arrangements for electronic fund transfer to the BLM for the payment balance due shall be made a minimum of 2 weeks prior to the payment date. Failure to submit the full bid price prior to the expiration of the 180th day following the sale date will result in the forfeiture of the 20 percent bid deposit to the BLM in accordance with 43 CFR 2711.3-1(d). No exceptions will be made. If there are no acceptable bids, the parcel may remain available for sale on a continuing basis in accordance with the competitive sale procedures described in 43 CFR 2711.3-1 without further legal notice.

Federal law requires that bidders must be: (a) A citizen of the United States 18 years of age or over; (b) A corporation subject to the laws of any State or of the United States; (c) A State, State instrumentality or political subdivision authorized to hold real property; or (d) An entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands to be

conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section. U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents concurrently with the bid shall result in the ineligibility of the bidder.

Within 30 days of the sale, the BLM will provide written acceptance or rejection of all bids received. Pursuant to 43 CFR 2711.3-1, a bid is the bidder's offer to the BLM to purchase the parcel. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale. All name changes and supporting documentation must be received at the Winnemucca District Office within 30 days after the sale. Otherwise, the patent will be issued to the name(s) on the bidder statement that is completed and submitted. To change the name on the bidder statement, successful bidder must notify the Winnemucca District Office in writing, and submit a new bidder statement, which is available at the Winnemucca District Office or in the sale brochure, and is to be completed by the intended patentee.

Terms and Conditions: No minerals will be reserved to the United States in accordance with BLM approved Supplemental Mineral Potential Report, dated May 2008.

In January 2013, a memorandum to the file was completed, analyzing the initial and recent Mineral Potential Reports and concluded that the overall mineral potential of the studied area is low and that recent factors have not increased confidence in potential mineral economic viability.

Acceptance of the offer to purchase this parcel will constitute an application for conveyance of unreserved mineral interests. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.0-6 and 2720.2(a). In conjunction with the final payment, the applicant for these "no known value" mineral interests will be required to pay a \$50 non-refundable filing fee for processing the conveyance of these mineral interests which will be sold simultaneously with the surface interests.

Segregation: Pursuant to the requirements of 43 CFR 2711.1-2(d), the lands identified above will upon publication in the **Federal Register** of this notice be segregated from all appropriations under the public land

laws, including the mining laws, except for the sale provisions of FLPMA. The segregation will terminate upon issuance of the patent, or upon publication in the **Federal Register** of a termination of the segregation or 2 years from the date of segregation whichever occurs first.

Upon successful completion of the sale, the patent issued would contain the following numbered reservations, covenants, terms and conditions:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The sale lands are subject to all valid existing rights.

3. A right-of-way for a power line granted to Harney Electric Company, its successor or assignees, by right-of-way N-2346, pursuant to the Act of March 4, 1911, 36 Stat. 1253 (43 U.S.C. 961).

4. A right-of-way for an access road granted to Humboldt County, its successor or assignees, by right-of-way N-81443, pursuant to the Act of October 21, 1976, (43 U.S.C. 1716).

5. A right-of-way for a buried fiber optic cable granted to Oregon-Idaho Utilities Inc., its successor or assignees, by right-of-way N-88990, pursuant to the Act of October 21, 1976, (43 U.S.C. 1716).

6. A right-of-way for a road maintenance project (man camp and water well) granted to Humboldt County, its successor or assignees, by right-of-way N-61117, pursuant to the Act of October 21, 1976, (43 U.S.C. 1716).

7. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (a) Violations of Federal, State, and local laws and regulations applicable to the real property; (b) Judgments, claims or demands of any kind assessed against the United States; (c) Costs, expenses, damages of any kind incurred by the United States; (d) Other releases or threatened releases on, into

or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws; (e) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (f) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction.

8. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Sta. 1670, notice is hereby given that the above described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor have any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of these parcels will not be on a contingency basis.

The parcels may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcels. Encumbrances of record, appearing in the case files for the parcel offered for sale, are available for review during business hours, 7:30 a.m. to 4:30 p.m. PT, Monday through Friday, at the Winnemucca District Office, except during federally recognized holidays.

Upon publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grant in accordance with 43 CFR 2807.15 and 2886.15. Land use applications may be considered after completion of the sale for these parcels if the parcels are not sold.

The BLM has notified valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder has been notified in writing of their rights and has applied for the conversion of their current authorization.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Services regulations. The BLM is not a party to any 1031 Exchange.

In order to determine the FMV, certain assumptions may have been made of the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, sale procedures and conditions, CERCLA, maps delineating the individual sale parcels, mineral potential report, Environmental Assessment, and other environmental documents is available for review at the Winnemucca District Office, by calling 775-623-1500 and asking to speak to Julie McKinnon, and online at: <http://www.blm.gov/nv/st/en/fo/wfo.html>.

Public Comments: Only written comments will be considered as properly filed. 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 may ask us in your comment to withhold your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

Any comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2710

Gene Seidlitz,

District Manager, Winnemucca.

[FR Doc. 2013-23339 Filed 9-24-13; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000 L1060000 XQ0000]

Second Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to solicit public nominations for three positions on the Wild Horse and Burro Advisory Board (Board). The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service. The BLM will accept public nominations for 30 days after the publication of this Notice. If you have already submitted a nomination in response to the *Notice of Call for Nominations for the Wild Horse and Burro Advisory Board*, which published in the **Federal Register** on July 2, 2013 (78 FR 39768), it is not necessary to respond to this Notice.

DATES: Nominations must be post marked or submitted to the address listed below no later than October 25, 2013.

ADDRESSES: All mail sent via the U.S. Postal Service should be sent as follows: National Wild Horse and Burro Program, U.S. Department of Interior, Bureau of Land Management, 1849 C Street NW., Room 2134 LM, Attn: Sharon Kipping, WO 260, Washington, DC 20240. All mail and packages that

are sent via FedEx or UPS should be addressed as follows: National Wild Horse and Program, U.S. Department of Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attn: Sharon Kipping, Washington, DC 20003. You may also send a fax to Sharon Kipping at 202-912-7182, or email her at skipping@blm.gov.

FOR FURTHER INFORMATION CONTACT: Sharon Kipping, Wild Horse and Burro Program Specialist, 202-912-7263. 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. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Members of the Board serve without compensation. However, while away from their homes or regular places of business, Board and subcommittee members engaged in Board or subcommittee business, approved by the Designated Federal Official (DFO), may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under Section 5703 of Title 5 of the United States Code. Nominations for a term of 3 years are needed to represent the following categories of interest:

- Wild Horse and Burro Research;
- Natural Resource Management;
- Public Interest (Equine Behavior).

The Board will meet no less than two times annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board. Nominations will not be accepted without a complete resume. The following information must accompany all nominations for the individual to be considered for a position:

1. The position(s) for which the nominee wishes to be considered;
2. The nominee's first, middle, and last name;
3. Business address and phone number;
4. Home address and phone number;
5. Email address;
6. Present occupation/title and employer;
7. Education: colleges, degrees, major field of study;
8. Career Highlights: Significant related experience, civic and professional activities, elected offices

(include prior advisory committee experience or career achievements related to the interest to be represented). Attach additional pages, if necessary;

9. Qualifications: Education, training, and experience that qualify you to serve on the Board;

10. Experience or knowledge of wild horse and burro management;

11. Experience or knowledge of horses or burros: Equine health, training, and management;

12. Experience in working with disparate groups to achieve collaborative solutions: e.g., civic organizations, planning commissions, school boards, etc.;

13. Indicate any BLM permits, leases, or licenses held by you or your employer;

14. Indicate whether you are a federally registered lobbyist; and

15. Explain why you want to serve on the Board.

Attach or have at least one letter of references sent from special interests or organizations you may represent, including, but not limited to, business associates, friends, co-workers, local, State, and/or Federal government representatives, or members of Congress. Please include any other information that speaks to your qualifications.

As appropriate, certain Board members may be appointed as special government employees. Special government employees serve on the Board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR 2634. Nominations are to be sent to the address listed under **ADDRESSES** above.

Privacy Act Statement: The authority to request this information is contained in 5 U.S.C. 301, the Federal Advisory Committee Act (FACA), and Part 1784 of Title 43, Code of Federal Regulations. It is used by the appointment officer to determine education, training, and experience related to possible service on an advisory council of the BLM. If you are appointed as an advisor, the information will be retained by the appointing official for as long as you serve. Otherwise, it will be destroyed 2 years after termination of your membership or returned (if requested) following announcement of the Board's appointments. Submittal of this information is voluntary. However, failure to complete any or all items will inhibit fair evaluation of your qualifications, and could result in you not receiving full consideration for appointment.

Membership Selection: Individuals shall qualify to serve on the Board

because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning. No person is to be denied an opportunity to serve because of race, age, sex, religion, or national origin. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by either Federal or state governments.

Authority: 43 CFR 1784.4–1.

Edwin L. Roberson,
Assistant Director, Renewable Resources and Planning.

[FR Doc. 2013–23340 Filed 9–24–13; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–505 and 731–TA–1231–1237 (Preliminary)]

Grain-Oriented Electrical Steel From China, Czech Republic, Germany, Japan, Korea, Poland, and Russia; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–505 and 731–TA–1231–1237 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of

imports from China of grain-oriented electrical steel (“GOES”), provided for in subheadings 7225.11.00, 7226.11.10, and 7226.11.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China and imports from China, Czech Republic, Germany, Japan, Korea, Poland, and Russia that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 4, 2013. The Commission’s views are to be issued within five business days thereafter, or by November 12, 2013.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: Effective September 18, 2013.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 18, 2013, by AK Steel Corporation, West Chester, Ohio; Allegheny Ludlum, LLC, Pittsburgh, Pennsylvania; and the United Steelworkers, Pittsburgh, Pennsylvania.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission’s rules, not later than seven

days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission’s Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 9, 2013, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with William.Bishop@usitc.gov and Sharon.Bellamy@usitc.gov (DO NOT FILE ON EDIS) on or before October 7, 2013. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission’s deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission’s rules, any person may submit to the Commission on or before October 15, 2013, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the

requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at <http://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 19, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013-23277 Filed 9-24-13; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gabriel Sanchez, M.D.; Decision and Order

On August 14, 2012, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Gabriel Sanchez, M.D. (hereinafter, Registrant), of Delray Beach, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certification of Registration AS9790420, and the denial of any pending applications for renewal or modification of the registration, on the ground that his "continued registration is inconsistent with the public interest." GX 9, at 1 (citing 21 U.S.C. 824(a)(4) and 823(f)).

The Show Cause Order alleged that in July of 2010, the Registrant issued prescriptions for oxycodone, a schedule II controlled substance, and carisoprodol, a schedule IV controlled substance under Florida law, to two undercover law enforcement officers (UCs). *Id.* The Show Cause Order alleged that these prescriptions "were not for a legitimate medical purpose in the usual course of professional practice because" the Registrant: (1) Did not "provide a legitimate diagnosis to warrant" the prescriptions; (2) "failed to conduct a sufficient physical exam to

determine a legitimate medical need" for the controlled substance prescriptions; (3) "prescribed controlled substances to the UCs despite evidence that they had illegally obtained, and were attempting to illegally obtain and abuse controlled substances"; and (4) "prescribed oxycodone in large quantities to the UCs absent any reliable evidence" that they were opioid tolerant. *Id.* at 1-2.

The Show Cause Order thus alleged that the oxycodone prescriptions issued by the Registrant "to the UCs were for other than a legitimate medical purpose in the usual course of professional practice in violation of Federal law." *Id.* at 2 (citing 21 U.S.C. 829, 841(a) and 21 CFR 1306.04(a), 1301.71). Additionally, the Show Cause Order alleged that "[t]he prescriptions for oxycodone and carisoprodol that [the Registrant] issued to the UCs" violated Florida law because the prescriptions "were for other than a legitimate medical purpose in the usual course of professional practice." *Id.* (citing Fla. Stat. Ann. § 456.072(1)(gg) and Fla. Admin. Code r. 64B8-9.013).

The Show Cause Order also notified the Registrant of his right to either request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing either option, and the consequences of failing to do either. *Id.* On August 16, 2012, the Government accomplished service by personally serving the Registrant with the Order to Show Cause at the DEA Miami Field Division. GX 6. Registrant neither submitted a request for a hearing nor a written statement in lieu of a hearing. Req. for Final Agency Action, at 1.

On May 20, 2012, the Government submitted a Request for Final Agency Action along with the investigative record it compiled. Having reviewed the record, I find that more than thirty days have now passed since the date of service of the Show Cause Order and neither Registrant, nor any one purporting to represent him, has filed a request for hearing or submitted a written statement in lieu of a hearing. Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings.

Findings

Registrant is a physician who is currently registered with DEA as a practitioner in schedules II-V at the registered address of 16244 South

Military Trail, Suite 490, Delray Beach, Florida 33484. GX 8. Registrant's registration expires by its terms on February 28, 2015. *Id.*

In July of 2010, Registrant was working as a physician at Pompano Beach Medical, located at 553 E. Sample Road, Pompano Beach, Florida 33064. GX 7. According to the affidavit of a DEA Diversion Investigator, on July 15, 2010, two DEA Task Force Officers (hereinafter, TFO One and TFO Two) conducted undercover visits to this medical facility and were seen by the Registrant. *Id.* at 2.

TFO One's Visit

On July 15, 2010, TFO One conducted an undercover visit at Pompano Beach Medical under the name of Larry Olsen. *Id.* During this visit, TFO One filled out a follow-up medical form,¹ and paid \$200 in cash. *Id.* On this form, TFO One indicated that without medication, his pain level was between zero and two. GX 4, at 3.

Before being seen by Registrant, TFO One was seen by Leah Gustavson, a medical assistant. *Id.* at 1-2; GX 7, at 2. When questioned by Gustavson about his pain level being between zero and two, TFO One stated that "the pain hasn't been near as bad as it . . . as it . . . uh . . . You know. It has been good." GX 4, at 3. TFO One informed Gustavson that his pain was good even without medication, as long as he "watch[ed] what [he is] doing." *Id.* He also indicated that his pain level had decreased even without the medication, leading Gustavson to indicate that the doctor would probably decrease his dosage. *Id.* at 4-5.

TFO One then informed Gustavson that he "may miss [his] next visit because [he would be] visiting the Baltimore area," and was concerned about having enough medication to last him through the visit. *Id.* at 5. Gustavson informed TFO One that "[w]e're not allowed to give you extra." *Id.* Gustavson then asked if TFO One was experiencing any side effects from his medication. *Id.* at 5-6. TFO One stated that he did not have any side effects, and noted that he does not "really get sick of medication . . . to be honest with you." *Id.* at 6. However, TFO One indicated that he was

¹ TFO One had visited the clinic twice before this visit, once in May, and once in June; at these visits, he was seen by another doctor. GX 7, at 2; GX 3, at 21-22. During the May visit, TFO One received prescriptions for 150 dosage units of oxycodone 30 mg, sixty dosage units of oxycodone 15 mg, and sixty dosage units of carisoprodol. GX 3, at 22. During the June visit, TFO One received prescriptions for 160 dosage units of oxycodone 30 mg, ninety dosage units of oxycodone 15 mg, and sixty dosage units of carisoprodol. *Id.* at 21.

experiencing sleep problems. *Id.* Gustavson then asked TFO One to complete “a series of range of motion tests, such as touching his toes and standing on the back of his heels.” GX 7, at 2. During these tests, Gustavson asked whether TFO One felt any tenderness, to which TFO One stated that he did not. GX 4, at 7.

Following these tests, Registrant entered the room, greeted TFO One, and inquired about his symptoms. *Id.* at 8–9. TFO One replied: “Oh! Lower back.” *Id.* Registrant then asked TFO One to lay down, face up, on the examination table, and proceeded to perform a series of range of motion tests. *Id.* at 9; GX 7, at 2. When asked if he experienced any pain during these tests, TFO One answered, “[n]ot much.” GX 4, at 9–10; GX 7, at 2.

After discussing TFO One’s previous visits to the clinic where he was seen by another doctor, Registrant noted that he had “bulging of the disc” but that there was no “compression of the nerves of the spinal cord. . . .” GX 4, at 10–11. Despite this finding, Registrant informed TFO One that he would be getting the same medication. *Id.* at 11. Registrant also suggested that TFO One could “go swimming,” and “may not need medications” because his “MRI [didn’t] show any compression of the nerves.” *Id.* Nonetheless, Registrant then noted that TFO One was also taking Soma (carisoprodol), and said that he would get the same medication. *Id.*

TFO One then asked Registrant if he “[w]ould . . . increase the medicine if the person is going out of town for any period of time.” *Id.* at 12. After initially saying no, Registrant asked TFO One how long he would be out of town. *Id.* TFO One replied, “[p]robably three (3) weeks or so.” *Id.* Registrant asked TFO One if he would come back in eight weeks; TFO One confirmed that he would. *Id.* Registrant then asked, “[t]hat’s what you want,” to which TFO One answered: “[y]eah,” and noted that he would probably miss his next appointment with Registrant. *Id.* Registrant then prescribed to TFO One 200 dosage units of oxycodone 30 mg, 120 dosage units of oxycodone 15 mg, and sixty dosage units of carisoprodol. GX 3, at 19. Registrant noted that he had increased TFO One’s medication, directed him to save some of the oxycodone 30 mg pills, and told him that he needed to come back in six weeks. GX 4, at 12–16.

TFO Two’s Visit

A second TFO, who used the name Gregory Martin, also visited Pompano Beach Medical on July 15, 2010. GX 7,

at 2; GX 2, at 2. As was the case with TFO One, TFO Two had been seen by another physician at the clinic during two prior visits. GX 7, at 2; GX 2, at 25–28. At the first visit, in May 2010, TFO Two was prescribed 160 dosage units of oxycodone 30 mg, and sixty dosage units of carisoprodol. GX 2, at 28. At the next visit, in June 2010, TFO Two received prescriptions for 190 dosage units of oxycodone 30 mg, and sixty dosage units of carisoprodol. *Id.* at 25.

During the July 2010 visit, TFO Two “paid \$200 cash . . . and filled out a patient follow-up form.” GX 7, at 2. He then was seen by Leah Gustavson, who noted that his “pain is pretty well controlled,” to which TFO Two replied, “[y]eah.” GX 5, at 2. Gustavson confirmed that TFO Two’s pain was in his mid-back, and asked whether he was experiencing any side effects. *Id.* at 2–3. TFO Two reported that he did not have any side effects. *Id.* at 3. Gustavson then proceeded to conduct a series of range of motion tests, which included asking TFO Two to “stand up and touch [his] toes.” *Id.* at 4–5. TFO Two and Gustavson discussed the TFO’s current prescriptions, with the TFO mentioning that at his previous visit, the other doctor had stated that he would give the TFO a prescription for oxycodone 15 mg for breakthrough pain. *Id.* at 7. After making a note of TFO Two’s request, *id.*, Gustavson told him that she was going to break up his prescription for 190 dosage units of oxycodone 30 mg into two prescriptions, because “[s]ome [pharmacies] don’t like to dispense more than one hundred eighty (180).” *Id.* at 8. While discussing his carisoprodol prescription, TFO Two informed Gustavson that he was taking “maybe one a day,” leading Gustavson to suggest reducing the prescription to thirty dosage units, or giving him forty so he will “have a couple of extra.” *Id.* at 8–9.

Registrant then entered the room to see TFO Two. *Id.* at 13. After discussing TFO Two’s back pain, Registrant had him perform additional range of motion tests, during which he did not indicate significant pain. *Id.* at 14. Instead, TFO Two stated that he had some stiffness in his legs, and a “little twitch” when moving his head to the left. *Id.* at 14–15. Registrant noted that he did not “see too much of the problem,” and when examining the TFO’s purported injury, observed that there was “no compromise of . . . the nerves at all.” *Id.* at 15. TFO Two then described his pain as “an annoyance.” *Id.*

Registrant questioned TFO Two’s need for the amount of oxycodone he was being prescribed, noting that 190 dosage units “is a big dose,” and

reiterating that he did not “have any compression of the nerves, or the spinal column, or the nerve root,” and that it was “difficult to understand that [he] ha[d] so much pain in there.” *Id.* at 16–17. TFO Two again mentioned his having discussed receiving a prescription for oxycodone 15 mg with the previous physician; Registrant told the TFO that he would “get [the TFO] some . . . to take in between then.” *Id.* at 17.

However, Registrant then observed that TFO Two was taking “a lot of oxycodone” for “that little problem.” *Id.* Registrant again reiterated that there was “no compromise in the nerves” and asked the TFO if he exercised. *Id.* Registrant told the TFO that swimming “could improve the flexibility of the abs and strengthening of the muscles,” and encouraged him to “[t]ry to do it often.” *Id.* at 17–18. Registrant then informed the TFO that he was writing the prescription for oxycodone 15 mg at his request. *Id.* at 18. Registrant also discussed with the TFO splitting the prescription for oxycodone 30 mg into two prescriptions to avoid issues with pharmacies refusing to fill the prescription. *Id.* at 18–19. TFO Two received two prescriptions for oxycodone 30 mg: one for 180 dosage units, and the other for ten dosage units; a prescription for 100 dosage units of oxycodone 15 mg; and a prescription for forty dosage units of carisoprodol. GX 2, at 22.

Evaluation of TFO Visits By the Government’s Expert

Dr. Reuben Hoch, M.D., reviewed the medical files for both TFOs, along with the recordings and transcripts of their visits with Registrant, and provided “an expert opinion regarding the prescribing practices of [Registrant].” GX 10, at 1. Dr. Hoch is an interventional pain medicine specialist and anesthesiologist practicing at Boca Raton Pain Medicine in Boca Raton, Florida. GX 10, at 1–2. Dr. Hoch received his medical degree from the Sackler School of Medicine at Tel Aviv University in 1988 and is Board Certified in Anesthesiology and Pain Medicine by the American Board of Anesthesiology. *Id.* at 1; GX 1, at 1. Dr. Hoch has “served as an expert witness on approximately ten different occasions.” GX 10, at 1.

Based on his review of the medical files, transcripts and recordings, Dr. Hoch noted, *inter alia*, that Registrant “performed a brief and cursory physical exam” of both TFOs, and that “in each case, the officer received prescriptions for more oxycodone than he had during each officer’s previous two visits at the clinic.” *Id.* at 2. Dr. Hoch’s observations

led him to “conclude that, in [his] opinion, the Registrant failed to establish a sufficient doctor patient relationship with either TFO [One] or TFO [Two] and that the prescribing of controlled substances was outside the usual course of professional practice and for other than a legitimate medical purpose.” *Id.*

In support of this conclusion, Dr. Hoch found that the Registrant did not conduct “an adequate evaluation of either patient,” observing that “a complete medical history was not taken.” *Id.* Nor, according to Dr. Hoch, did it appear from the records “that the registrant made a serious inquiry into the cause of each patient’s pain,” which is required “[i]n a valid doctor/patient relationship.” *Id.* Dr. Hoch further explained that in order to complete a sufficient medical history, a physician should “review the records of other physicians who have treated the patient.” *Id.* Dr. Hoch noted that while both TFOs signed releases allowing access to their medical records, there were “no prior medical records included or referenced in the medical file.” *Id.*

Dr. Hoch further observed that the Registrant did not “conduct an adequate physical examination of [either] officer,” and stated that “during Registrant’s (or his medical assistant’s) examinations, neither officer demonstrated pain sufficient to justify the repeated prescribing of controlled substances.” *Id.* Dr. Hoch also found that Registrant did not adequately address “the effect of pain on the officers’ physical and psychological function,” which Dr. Hoch characterized as an “important standard of pain management.” *Id.*

Dr. Hoch’s also found that Registrant “failed to create and/or document a sufficient treatment plan.” *Id.* Dr. Hoch noted that Registrant did not recommend any “further diagnostic evaluations or other therapies except to suggest that each officer attempt swimming,” even though each officer’s MRI “failed to demonstrate serious enough pathology for the officers to receive the large amounts of controlled substances that were prescribed.” *Id.* at 2–3. Dr. Hoch then observed that the pathologies shown on the MRI “can usually be addressed by other means, such as physical therapy, exercise, work strengthening programs, abdominal core training, anti-inflammatories, and at times, injections such as nerve blocks with corticosteroids.” *Id.* at 3.

Based on Registrant’s statements during his examinations of each TFO, Dr. Hoch also noted that even Registrant had doubts as to whether “there was a

legitimate medical need to prescribe the large amounts of opioid medications that were prescribed.” *Id.* However, Dr. Hoch observed that “there was no attempt by Registrant to evaluate the appropriateness of continued treatment except to express doubt about the continued prescribing of opioid medications.” *Id.* Moreover, notwithstanding the doubts Registrant expressed about utility of this course of treatment, he actually increased the amount of controlled substances prescribed to both TFOs. *Id.* Dr. Hoch thus opined that these actions demonstrate that “there was an insufficient review of the course of treatment. . . .” *Id.*

Dr. Hoch further concluded “that Registrant failed to sufficiently monitor the officers’ compliance in medication usage.” *Id.* This conclusion was based on the fact that Registrant increased both oxycodone prescriptions for TFO One, “despite Registrant’s expressed doubts about the need for so much medication.” *Id.* Dr. Hoch then observed that Registrant increased these prescriptions based solely on TFO One’s request and accompanying representation that he might miss his next appointment. *Id.* Dr. Hoch stated that TFO One’s behavior “should have indicated a possible red flag for drug abuse.” *Id.*

Dr. Hoch found “the evidence of possible drug abuse . . . even more obvious” with respect to TFO Two. *Id.* Dr. Hoch’s conclusion was based on the fact that “TFO [Two] simply asked for more medication, not because of any new symptoms or pathology, but because another doctor had allegedly promised him more medication for ‘breakthrough [pain]’ at his last appointment.” *Id.* Despite this warning sign, and “without consulting the medical record,” Registrant issued a prescription for 100 dosage units of oxycodone 15 mg to TFO Two. *Id.* Dr. Hoch concluded “that Registrant failed to give the required special attention to the officers who . . . both demonstrated that they were at risk for misusing their medications.” *Id.* at 3–4. Dr. Hoch further concluded that Registrant’s actions in providing TFO Two with additional oxycodone for “breakthrough pain” lacked a legitimate medical justification and was based solely on the TFO’s request for that medication. *Id.* at 4.

Finally, Dr. Hoch concluded that “there was no legitimate medical justification for prescribing carisoprodol . . . to either TFO [One] or TFO [Two].” *Id.* Dr. Hoch noted that neither TFO’s medical record contained “any medical evidence justifying the need for

prescribing carisoprodol.” *Id.* Dr. Hoch’s expert opinion regarding Registrant’s treatment of and prescribing to the TFOs stands unrefuted and “is sufficiently reliable to be accepted and relied upon in this [Order].” *See Cynthia M. Cadet, M.D., 76 FR 19450, 19458 (2011).*

DI McRae’s Interview of Registrant

Following the July 2010 visits by the TFOs with Registrant, and Dr. Hoch’s evaluation of their medical records and recordings and transcripts of the visits, a DEA Diversion Investigator (DI) and a third TFO interviewed Registrant regarding “his employment at Pompano Beach Medical.” GX 7, at 3. During this interview, Registrant informed the DI and the third TFO that he was currently employed at an entity named: “A Pain Clinic of Delray, Inc.” *Id.* Regarding his employment at Pompano Beach Medical, Registrant stated that “he was taught that if he prescribed fewer than 200 pills of oxycodone in a single prescription and conducted a physical examination, there would not be a ‘problem’ with the prescription.” *Id.* Registrant admitted that due to “the large volume of patients he was required to see at the clinic, a physical exam lasted only 5–10 minutes.” *Id.*

Discussion

Under the CSA, “[a] registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.”² 21 U.S.C. 824(a)(4). In determining “the public interest” with respect to a practitioner, Congress directed that the following factors be considered:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
 - (2) The [registrant’s] experience in dispensing, or conducting research with respect to controlled substances.
 - (3) The [registrant’s] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
 - (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
 - (5) Such other conduct which may threaten the public health and safety.
- 21 U.S.C. 823(f).

² Pursuant to 28 CFR 0.100(b), this authority has been delegated by the Attorney General to the Administrator of the Drug Enforcement Administration.

“[T]hese factors are . . . considered in the disjunctive.” *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). It is well settled that I “may rely on any one or a combination of factors, and may give each factor the weight [I] deem appropriate in determining whether a registration should be revoked.” *Id.*; see also *MacKay v. DEA*, 664 F.3d 808, 816 (10th Cir. 2011); *Volkman v. DEA*, 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I “need not make explicit findings as to each one.” *MacKay*, 664 F.3d at 816 (quoting *Volkman*, 567 F.3d at 222 (quoting *Hoxie*, 419 F.3d at 482)).³

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for revocation or suspension pursuant to 21 U.S.C. 824(a) are met. 21 CFR 1301.44(e). This is so even in a non-contested case.

In this matter, while I have considered all of the factors,⁴ I conclude that the Government’s evidence with respect to Registrant’s experience in dispensing controlled substances (factor two), and his compliance with applicable laws related to controlled substances (factor four), establishes that Registrant’s continued registration “would be inconsistent with the public interest.” 21 U.S.C. 823(f). Because Registrant waived his right to present evidence in rebuttal of the Government’s *prima facie* case, I will order that his registration be revoked.

³ “In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant’s misconduct.” *Jayam Krishna-Iyer*, 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. See *MacKay*, 664 F.3d at 821.

⁴ As for factor one, the Government presented no evidence regarding the status of Registrant’s state license. However, even assuming that Registrant currently holds a valid state license authorizing him to prescribe controlled substances, this factor is not dispositive of the public interest determination “because DEA has [a] separate oversight responsibility with respect to controlled substances.” *MacKay*, 664 F.3d at 818.

Regarding factor three, there is no evidence that Registrant has been convicted of an offense related to the manufacture, distribution or dispensing of controlled substances. However, as there are a number of reasons why a person may never be convicted of an offense falling under this factor, let alone be prosecuted for one, “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is thus not dispositive. *Dewey C. MacKay*, 75 FR 49956, 49973 (2010), *pet. for rev. denied*, *MacKay*, 664 F.3d at 810.

Factors Two and Four—The Registrant’s Experience in Dispensing Controlled Substances and Compliance With Applicable Federal and State Laws Related to Controlled Substances

Under a longstanding DEA regulation, a prescription for a controlled substance is not “effective” unless it is “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a). This regulation further provides that “an order purporting to be a prescription issued not in the usual course of professional treatment. . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.” *Id.*; see also Fla. Stat. § 893.05(1) (“A practitioner, in good faith and in the course of his or her professional practice only, may prescribe . . . a controlled substance[.]”); *id.* § 893.13(1)(a) (rendering it “unlawful for any persons to sell, manufacture, or deliver . . . a controlled substance” except as authorized by the Florida Comprehensive Drug Abuse Prevention and Control Act, Fla. Stat. §§ 893.01 *et seq.*); *id.* § 458.331(q) (providing that prescribing “any controlled substance, other than in the course of the physician’s professional practice,” is grounds for “disciplinary action”).⁵

As the Supreme Court recently explained, “the [CSA’s] prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.” *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135, 143 (1975)).

Under the CSA, it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act “in the usual course of . . . professional practice” and to issue a prescription for a “legitimate medical purpose.” *Laurence T. McKinney*, 73 FR 43260, 43265 n.22 (2008); see also *Moore*, 423 U.S. at 142–43 (noting that evidence established that physician “exceeded the bounds of

⁵ Florida law defines the term “prescription” to mean, in relevant part, “an order for drugs . . . written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs . . . issued in good faith and in the course of professional practice.” Fla. Stat. § 893.02(22).

‘professional practice,’” when “he gave inadequate physical examinations or none at all,” “ignored the results of the tests he did make,” and “took no precautions against . . . misuse and diversion”). The CSA generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship. See *Kamir Garcés-Mejias*, 72 FR 54931, 54935 (2007); *United Prescription Servs., Inc.*, 72 FR 50397, 50407 (2007); but see 21 U.S.C. 829(e)(2)(B) (providing federal standard for prescribing over the internet).

At the time of the TFOs’ visits, the Florida Board of Medicine had, by regulation, adopted Standards for the Use of Controlled Substances for the Treatment of Pain.⁶ In promulgating these standards, the Board explained that it “will consider prescribing . . . controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state or federal law.” Fla. Admin. Code r.64B8–9.013(1)(e) (2009) (emphasis added). The Board further explained that the standards were “not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.” *Id.* at § 1(g).

Of particular relevance here is the Board’s then-existing “Evaluation of the Patient” standard. This standard provided that:

A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance. *Id.* § (3)(a).

⁶ In October 2010, the Board issued a new regulation which, *inter alia*, amended various provisions of the guidelines by substituting the word “shall” for “should.” For example, before the amendment, the standard governing the treatment plan stated that “[t]he written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved psycho social function.” Fla. Admin. Code r.64B8–9.013(3)(b). So too, the informed consent standard provided that “[t]he physician should discuss the risks and benefits of the use of controlled substances with the patient.” *Id.* § (3)(c). Following the amendment, both of these provisions use the word “shall” rather than “should.”

Here, the Government's Expert provided substantial evidence that Registrant acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to the TFOs. As the Expert explained, and notwithstanding the Florida Board's "Evaluation of the Patient" standard, Registrant did not conduct an adequate evaluation of the TFOs in that he failed to take a complete medical history, did not make "a serious inquiry into the cause of each [TFO's] pain," and did not "conduct an adequate physical examination of" of either TFO. GX 10, at 2. The Expert further observed that during the examination of the TFOs, "neither officer demonstrated pain sufficient to justify the repeated prescribing of controlled substances" and that Registrant did not adequately address "the effect of pain on the officers' physical and psychological function." *Id.*

The Expert thus concluded that "Registrant failed to establish a sufficient doctor patient relationship with either TFO . . . and that [his] prescribing of controlled substances [to them] was outside the usual course of professional practice and for other than a legitimate medical purpose." ⁷ *Id.* at 2. Accordingly, I find that Respondent

⁷ The Expert also noted that Registrant "failed to create and/or document a sufficient treatment plan"; failed to order "further diagnostic evaluations," even though each TFO's MRI "failed to demonstrate serious enough pathology for the officer to receive the large amounts of controlled substances that were prescribed"; and that the pathologies observed on their MRIs "can usually be addressed by other means, such as physical therapy, exercise, work strengthening programs, abdominal core training, anti-inflammatories, and at times, . . . nerve blocks with corticosteroids." GX 10, at 2-3.

As further support for his conclusion, the Expert noted that Registrant had increased the amount of controlled substances he prescribed to the two TFOs, notwithstanding that he expressed doubt as to whether either TFO needed the medications they were getting. *Id.* at 3. As the found above, Registrant told TFO One that he "may not need medications" because his "MRI [didn't] show any compression of the nerves." GX 4, at 11. And as for TFO Two, Registrant noted that 190 dosage units of oxycodone 30 mg "is a big dose," and that it was "difficult to understand" why TFO Two had "so much pain in there" given that the TFO did not "have any compression of the nerves, or the spinal column, or the nerve root." GX 5, at 16-17.

Finally, the Expert noted that with respect to TFO One, Registrant increased the prescriptions based solely on the TFO's request that he do so because he might miss his next appointment, and that with respect to TFO Two, Registrant gave him an additional prescription for 100 dosage units of oxycodone 15mg based solely on the TFO's representation that the doctor he had previously seen at the clinic had promised him additional medication for breakthrough pain and did so "without consulting the medical record." GX 10, at 3.

violated the CSA's prescription regulation and that he knowingly or intentionally diverted controlled substances when he prescribed oxycodone to the TFOs. *See* 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1); *see also* Fla. Stat. §§ 893.05(1), 893.13(1)(a).

I therefore hold that the Government's evidence with respect to factors two and four establishes that Registrant "has committed such acts as would render his registration . . . inconsistent with the public interest." 21 U.S.C. 824(a)(4).⁸ Because Registrant waived his right to a hearing (or to submit a written statement in lieu of a hearing), there is no evidence in the record to refute the conclusion that his continued registration is "inconsistent with the public interest." *Id.* Accordingly, I will order that Registrant's registration be revoked and that any pending applications be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AS9790420, issued to Gabriel Sanchez, M.D., be, and hereby is, revoked. I further order that any pending application of Gabriel Sanchez, M.D., to renew or modify the above registration be, and it hereby is, denied. This Order is effective October 25, 2013.

Dated: September 17, 2013.

Michele M. Leonhart,

Administrator.

[FR Doc. 2013-23285 Filed 9-24-13; 8:45 am]

BILLING CODE 4410-09-P

⁸ While the Government alleged in the Show Cause Order that Registrant's prescribing of carisoprodol also lacked a legitimate medical purpose, it is noted that carisoprodol was not federally controlled at the time of the events at issue here. *See Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV*, 76 FR 77330 (Dec. 12, 2011) (final rule). However, the Expert opined that Registrant did not have a legitimate medical justification for prescribing carisoprodol, which was then controlled under Florida law, to either TFO. *See* GX 10, at 4; Fla. Stat. § 893.03(4)(jjj) (2010). While the Expert's opinion would support a finding that Registrant violated Florida law in prescribing carisoprodol to the TFOs, *see* Fla. Stat. §§ 893.05(1), 893.13(1)(a), and such a violation is relevant in assessing a registrant's likelihood of future compliance with the CSA (under either factor four or five), *see John V. Scaleri*, 78 FR 12092, 12100 (2013) (citing cases), the Government did not rely on this conduct in its Request for Final Agency Action. Accordingly, nor do I.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Fisher Clinical Services, Inc.

Pursuant to Title 21 Code of Federal Regulations (CFR) 1301.34 (a), this is notice that on June 21, 2013, Fisher Clinical Services, Inc., 7554 Schantz Road, Allentown, Pennsylvania 18106, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methyphenidate (1724)	II
Levorphanol (9220)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II

The company plans to import the listed substances for clinical trials, analytical research and testing.

The import of the above listed basic classes of controlled substances will be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than October 25, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745-46, all applicants for registration to import a basic classes of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements

for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 16, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-23287 Filed 9-24-13; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1632]

Interview Room Recording System Standard and License Plate Reader Standard Workshops

AGENCY: National Institute of Justice, Department of Justice.

ACTION: Notice of the Interview Room Recording System Standard and License Plate Reader Standard Workshops.

SUMMARY: The National Institute of Justice (NIJ) and the International Association of Chiefs of Police (IACP) are hosting two workshops in conjunction with the 120th Annual IACP Conference and Exposition in Philadelphia, PA. The focus of the workshops is the development of NIJ performance standards for Interview Room Recording Systems and License Plate Readers used by criminal justice agencies. Sessions are intended to inform manufacturers, test laboratories, certification bodies, and other interested parties of these standards development efforts. These workshops are being held specifically to discuss recent progress made toward the standards and to receive input, comments, and recommendations.

Space is limited at each workshop, and as a result, only 50 participants will be allowed to register for each session. We request that each organization limit their representatives to no more than two per organization. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements.

DATES: Both workshops will be held on Saturday, October 19, 2013. The License Plate Reader standard session will take place from 2:00 p.m. to 3:00 p.m. The Interview Room Recording System standard session will take place from 3:00 p.m. to 4:00 p.m.

ADDRESSES: Pennsylvania Convention Center, 1101 Arch Street, Philadelphia, PA 19107, Room 103A.

FOR FURTHER INFORMATION CONTACT: For information about the NIJ Interview Room Recording System or License Plate Reader standards under development, please contact Mark Greene, by telephone at (202) 307-3384 [Note: this is not a toll-free telephone number], or by email at mark.greene2@usdoj.gov. To RSVP for the workshops, please contact Michael Fergus at fergus@theiacp.org. For general information about NIJ standards, please visit <http://www.nij.gov/standards> or <http://www.justnet.org/standards>.

Gregory K. Ridgeway,

Acting Director, National Institute of Justice.

[FR Doc. 2013-23298 Filed 9-24-13; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice Requirements of the Health Care Continuation Coverage Provisions

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Notice Requirements of the Health Care Continuation Coverage Provisions," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 25, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201307-1210-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235,

725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides that, under certain circumstances, a group health plan participant or beneficiary who meets the COBRA *qualified beneficiaries* definition may elect to continue group health coverage temporarily following a qualifying event that would otherwise result in loss of coverage. The COBRA provides that the Secretary of Labor has the authority under Employee Retirement Income Security Act of 1974 (ERISA) section 608 to carry out the provisions of ERISA Title I Part 6.

The DOL issued regulations to implement the ERISA section 606 notice requirements, because providing timely and adequate notifications regarding COBRA rights and responsibilities is critical to a qualified beneficiary's ability to obtain health continuation coverage. In addition, the DOL believes, regulatory guidance was necessary to establish clearer standards for administering and processing COBRA notices.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

The DOL obtains OMB approval for this information collection under Control Number 1210-0123. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval is scheduled to expire on September 30,

2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2013 (78 FR 30333).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0123. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - enhance the quality, utility, and clarity of the information to be collected; 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.

Agency: DOL-EBSA.

Title of Collection: Notice Requirements of the Health Care Continuation Coverage Provisions.

OMB Control Number: 1210-0123.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 599,000.

Total Estimated Number of Responses: 20,712,556.

Total Estimated Annual Burden Hours: 0.

Total Estimated Annual Other Costs Burden: \$26,554,404.

Dated: September 18, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013-23260 Filed 9-24-13; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before October 25, 2013.

ADDRESSES: You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT:

Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (Email), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any

mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2013-039-C.

Petitioner: Rock N Roll Coal Company, Inc., P.O. Box 142, Justice, West Virginia 24851.

Mines: Mine No. 3, MSHA I.D. No. 46-08646 and Mine No. 7, MSHA I.D. No. 46-09093, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101-1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. In support of the alternative method, the petitioner proposes to continue performing the weekly inspections and functional testing of the complete deluge-type water spray system. The petitioner states that:

(1) The system consists of an average of thirty (30) sprays along each of approximately ten primary belt-conveyor drives and an average of sixty (60) sprays along each eight secondary drives.

(2) The company currently complies with the requirements of the existing standard by providing each nozzle with a blow-off dust cover. In view of the frequent inspections and functional testing of the system, the dust covers are not necessary because nozzles can be maintained in an unclogged condition through weekly use.

(3) It is burdensome to recap the large number of covers weekly after each inspection and functional test.

The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners employed at the Rock and Roll Coal Company, as the standard.

Docket Number: M-2013-040-C.

Petitioner: Blackwood Mining, 540 East Center Street, Ashland, Pennsylvania 17921.

Mine: Mammoth Slope, MSHA I.D. No. 36-10062, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1100-2(a)(2) (Quantity and location of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10-quart pails is not practical. The petitioner states that:

(1) Equipping its small anthracite mine with two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face will provide equivalent fire protection.

(2) Anthracite coal is low in volatile matter and dust is not explosive.

(3) The working section is at or below mine pool elevation with frequent pumping required to de-water the work area.

(4) All up-pitch workings of moderate to steep pitch are accessed only through ladders making the carrying of water in pails impractical.

(5) Electric face equipment is nonexistent in this hand-loading anthracite mine and only air-operated equipment is used in or inby the last open crosscut.

(6) The history of underground mines shows that fires occurring in the working faces are nonexistent in recent years due to improved explosives and low volatile matter in anthracite coal.

(7) This anthracite mine produces far less than the 300 ton per shift criteria using the hand-loading method.

(8) Belt conveyor haulage is not used in this underground mine for section/main haulage minimizing fire potential.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M-2013-041-C.

Petitioner: Blackwood Mining, 540 East Center Street, Ashland, Pennsylvania 17921.

Mine: Mammoth Slope, MSHA I.D. No. 36-10062, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine maps).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections in lieu of contour lines on mine maps through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope. In addition, the petitioner

proposes to limit the required mapping of mine workings above and below to those present within 100 feet of the vein(s) being mined unless the veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner states that:

(1) Due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible.

(2) The use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provides critical information about spacing between veins and proximity to other mine workings, which fluctuate considerably.

(3) The vast majority of current underground anthracite mining involves either second mining of remnant pillars from previous mining or the mining of veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings that may or may not be mapped.

(4) All mapping for mines above and below is researched by the petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine, and a hazard analysis is done when mapping indicates the presence of known or potentially flooded workings.

(5) When no rock tunnel connections are found, mine workings that exist beyond 100 feet from the mine, are recognized as presenting no hazard to the mine due to the pitch of the vein and rock separation.

(6) Additionally, the mine workings above and below are usually inactive and abandoned and, therefore, are not usually subject to changes during the life of the mine.

(7) Where evidence indicates prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered mined and flooded and appropriate precautions will be taken through § 75.388, which addresses drilling boreholes in advance of mining, where possible.

(8) Where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes may be used to intercept the workings and the results analyzed prior to beginning mining in the affected area.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M-2013-042-C.

Petitioner: Blackwood Mining, 540 East Center Street, Ashland, Pennsylvania 17921.

Mine: Mammoth Slope, MSHA I.D. No. 36-10062, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202-1(a) (Temporary notations, revisions and requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the interval of survey to be established on an annual basis from the initial survey in lieu of every 6 months as required. The petitioner proposes to continue to update the mine map by hand notations on a daily basis and conduct subsequent surveys prior to commencing retreat mining, and whenever either a drilling program under § 75.388 or plan for mining into inaccessible areas under § 75.389 is required. The petitioner states that:

(1) The low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. In most cases annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development.

(2) The vast majority of small anthracite mines are non-mechanized and use hand-loading mining methods.

(3) Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways.

(4) The available engineering/surveyor resources are limited in the anthracite coal fields and surveying on an annual basis is difficult to achieve with four individual contractors currently available.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M-2013-043-C.

Petitioner: Blackwood Mining, 540 East Center Street, Ashland, Pennsylvania 17921.

Mine: Mammoth Slope, MSHA I.D. No. 36-10062, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner seeks to permit the use of a slope conveyance (gunboat) to transport persons without safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner states that:

(1) The haulage slope of the Mammoth Mine is typical of those in the anthracite region, having a relatively high angle and frequently changing pitches.

(2) A functional safety catch capable of working in slopes with knuckles and curves is not commercially available. If a makeshift device is installed it would activate on knuckles or curves when no emergency existed, causing a tumbling effect on the conveyance which would increase rather than decrease the hazard to miners.

(3) A safer alternative is to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device and use hoisting ropes having a factor of safety greater than the American Standards Specifications for the Use of Wire Rope in Mines.

(4) Furthermore, the slope and haulage system at this mine are essentially the same as those to which petitions granting the use of the alternative suggestion have been approved since 1973.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M-2013-044-C.

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Mines: Parkwood Mine, MSHA I.D. No. 36-08785, located in Armstrong County, Pennsylvania and Kocjancic Mine, MSHA I.D. No. 36-09436, located in Jefferson County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance), 30 CFR 18.35(a)(5)(i)(ii) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 480-volt trailing cables with a maximum length of 1200 feet when No. 2 American Gauge Wire (AWG) cable is used and 480-volt trailing cables with a maximum length of 950 feet when No. 4 AWG cable is used on roof bolters. The petitioner states that:

(1) The trailing cable for the 480-volt roof bolters will not be smaller than No. 4 AWG cable.

(2) All circuit breakers used to protect the No. 2 AWG trailing cable and No. 4 AWG trailing cable exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers will be sealed to insure that the settings on these breakers cannot be changed, and these breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the cables.

(3) Replacement circuit breakers and/or instantaneous trip units used to

protect No. 2 AWG trailing cable or No. 4 AWG trailing cable will be calibrated to trip at 500 amperes and will be sealed.

(4) All components that provide short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault currents available.

(5) During each production day, the trailing cables, and the circuit breakers will be examined in accordance with all 30 CFR provisions.

(6) Permanent warning labels will be installed and maintained on the load center to identify the location of each sealed short-circuit protection device. These labels will warn miners not to change or alter the sealed short-circuit settings of these devices.

(7) If the affected trailing cables are damaged in any way during the shift, the cable will be de-energized and repairs made.

(8) The petitioner's alternative method will not be implemented until all miners who have been designated to operate the bolters, or any other person designated to examine the trailing cables or trip settings on the circuit breakers have received proper training as to the performance of their duties.

(9) Within 60 days after this proposed decision and order becomes final, the proposed revisions for the petitioner's approved 30 CFR part 48 training plan will be submitted to the District Manager. The training plan will include the following:

(a) The hazards of setting the short-circuit device(s) too high to adequately protect the trailing cables.

(b) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

(c) Mining methods and operating procedures for protecting the trailing cables against damage.

(d) Proper procedures for examining the trailing cables to ensure safe operating condition by visual inspection of the entire cable, observing the insulation, the integrity of the splices, nicks and abrasions.

The petitioner further states that procedures specified in 30 CFR 48.3 for proposed revisions to approved training plans will apply.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners than that of the existing standard.

Dated: September 19, 2013.

George F. Triebisch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013-23266 Filed 9-24-13; 8:45 am]

BILLING CODE 4510-43-P

NUCLEAR REGULATORY COMMISSION

[EA-12-189; NRC-2013-0220]

Chicago Bridge and Iron; Confirmatory Order (Effective Immediately)

I.

Chicago Bridge and Iron (CB&I), is a large multinational conglomerate engineering, procurement and construction company serving various industries in the United States and overseas; some of which are regulated by the U.S. Nuclear Regulatory Commission (NRC). CB&I's main office is located in The Woodlands, Texas.

II.

This Confirmatory Order (referenced as Confirmatory Order or Order) is the result of an agreement reached during alternative dispute resolution (ADR) mediation sessions conducted on June 11, 2013, and July 29, 2013, in Rockville Maryland.

On June 4, 2011, the NRC's Office of Investigations (OI) issued its report of investigation (OI Report No. 2-2011-047). The investigation related to a nuclear construction site in South Carolina, operated by CB&I, formerly known as Shaw Nuclear Services, Inc. and hereafter referred to as Shaw. Based upon evidence developed during its investigation, the NRC identified an apparent violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 52.5, "Employee protection," involving a former Shaw employee who was terminated, in part, for notifying Shaw and Louisiana Energy Service (at the direction of the individual's supervisor, a Shaw official), of a potential 10 CFR part 21 issue regarding selected heats of rebar that had failed the ASME bend test and may have been shipped to the Louisiana Energy Service facility. In addition, the NRC found Shaw's Code of Corporate Conduct to be overly restrictive and may prevent employees from raising nuclear safety concerns.

By letter dated October 19, 2012, the NRC identified to CB&I the apparent violation of 10 CFR 52.5 and offered CB&I the opportunity to provide a response in writing, attend a pre-decisional enforcement conference, or to request ADR in which a neutral mediator with no decision-making

authority would facilitate discussions between the NRC and CB&I, and if possible, assist the NRC and the parties in reaching an agreement on resolving the concerns. In a letter dated January 15, 2013, CB&I provided a written response to the apparent violation. In the letter, CB&I denied it had violated 10 CFR 52.5, contending that the individual did not engage in a legally protected activity and was terminated solely for violating the company's Code of Conduct, which prohibited disclosing company confidential material to an unauthorized third party.

Based upon the information gathered through the NRC's investigation and the information provided in the written response, the NRC issued a Notice of Violation (Notice) and Proposed Imposition of Civil Penalties to CB&I on April 18, 2013. As part of the Notice, the NRC required CB&I to either reply in writing to the Notice or to request ADR. CB&I continued to oppose the violation and, in lieu of continuing the enforcement process and eventually requesting a hearing on the violation, requested ADR.

On June 11, 2013 and July 29, 2013, the NRC and CB&I met in Rockville, Maryland for ADR sessions mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III.

The NRC acknowledges that CB&I agreed to undertake actions related to a chilled work environment at its site in Lake Charles, Louisiana, formerly known as Shaw Modular Solutions. These actions were agreed to by CB&I in their May 17, 2013, letter in response to the NRC's chilling effect letter dated April 18, 2013. These actions included:

1. Perform an independent focused assessment to determine if effective programmatic controls are in place at CB&I Lake Charles in the following five areas: control of special processes; inspections; personnel training and qualification; instructions, procedures, and drawings; and corrective actions.

2. Review the independent contractor's 2012 nuclear safety culture assessment report and initiate corrective actions, as necessary.

3. Enter the conditions associated with the Chilling Effect Letter into its corrective action program (CAP), characterize it as a significant condition adverse to quality (SCAQ), and complete a root cause analysis. CB&I shall evaluate the potential for similar issues at other CB&I nuclear facilities.

During the ADR mediation session, an agreement in principle was reached in which CB&I agreed to take additional actions within CB&I's business groups where nuclear related activities take place including:

1. Communicating CB&I's strategy to improve its nuclear safety culture recognizing that efforts to date have not been fully effective. This communication is to include a brief summary regarding employee protection, the NRC's concerns expressed in its April 18, 2013, Chilling Effect Letter regarding CB&I's Lake Charles site, and CB&I's experience, insights, lessons learned, and corrective actions both taken and planned. This communication will be followed by all-hands meetings for management to discuss the importance of the above written communication; and to allow employees to provide feedback and ask questions of management.

2. Ensuring that its nuclear safety culture and safety conscious work environment policies, guidance and related materials are in place, updated, and consistent with: 1) The NRC's March 2011 Safety Culture Policy Statement and associated traits; and 2) the NRC's May 1996 Safety Conscious Work Environment Policy Statement; and is informed by: (1) The NRC's Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment"; and (2) the industry's common language initiative (i.e., INPO 12-012, Revision 1, April 2013).

3. Sharing the company's experience and insights with respect to improving nuclear safety culture, including lessons learned and actions taken in a presentation to other nuclear vendors in the industry at an NRC sponsored vendor conference; and if requested by the NRC, as a panelist in a breakout session at the 2014 Regulatory Information Conference.

4. Hiring a third-party, independent consultant to assist CB&I to develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for CB&I nuclear employees.

5. Establishing a uniform Executive Review Board (ERB) process to ensure independent management review of all proposed significant adverse actions for all of its nuclear employees to ensure these actions comport with applicable employee protection requirements and nuclear safety culture traits, and to assess and mitigate the potential for any chilling effect.

6. Developing a single Employee Concerns Program (ECP) for CB&I nuclear employees.

7. Developing individual performance appraisal assessment criteria for individual supervisor's appraisals to evaluate if these individuals are meeting CB&I's expectations with regards to employee protection, Nuclear Safety Culture and Safety Conscious Work Environment.

8. Establishing, where applicable, an active CAP trending process to include the ability to trend root and contributing causes related to CB&I's nuclear safety culture and incorporate trending information in a process similar to that in NEI 09-07.

9. Developing a process by which personnel engaged in work associated with NRC-regulated activities departing the company are given the opportunity to participate in an Employee Concerns Program Exit Interview/Survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

10. Establishing a nuclear safety culture oversight program, including one or more committees advised by external consultants with extensive nuclear experience.

11. Establishing a CB&I Nuclear Safety Officer function to address company-wide nuclear safety culture and safety conscious work environment activities.

12. Hiring a third-party, independent consultant to perform tailored comprehensive nuclear safety culture assessments, including site surveys, of all CB&I nuclear business entities not already assessed by a licensee and perform assessments or surveys to ensure effectiveness of the Nuclear Safety Culture and Safety Conscious Work Environment programs. Follow-up assessments or surveys shall be conducted every two years for a total of 4 years.

13. Revising its Code of Corporate Conduct to include a provision stating that all employees have the right to raise nuclear safety and quality concerns to CB&I, the NRC, and Congress, or engage in any other type of protective activity without being subject to disciplinary action or retaliation.

On September 13, 2013, CB&I consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. CB&I further agreed in its September 13, 2013, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. In view of the Confirmatory Order, consented by CB&I's thereto as evidenced by their signed "Consent and Hearing Waiver Form" and subject to the satisfactory completion of the conditions of the Confirmatory Order by CB&I, the NRC is exercising its enforcement discretion and

withdrawing the Notice of Violation and Proposed Imposition of Civil Penalties.

The NRC has concluded that its concerns can be resolved through effective implementation of CB&I's commitments. I find that CB&I's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that CB&I's commitments be confirmed by this Order. Based on the above and CB&I's consent, this Order is immediately effective upon issuance.

IV.

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 52, *it is hereby ordered, effective immediately, that:*

Note: For purposes of this Confirmatory Order, the term "employees" shall mean persons employed by CB&I and its contractors and subcontractors, excluding (a) short term (less than ninety (90) days) contractors, and subcontractors, and (b) suppliers, who are engaged in work associated with NRC-regulated activities at or directly related to a CB&I site or project.

A. Communication

1. By no later than two (2) months after issuance of the Confirmatory Order, the CB&I Chief Executive Officer shall:

(a) Communicate, in writing, to its current employees CB&I's strategy to improve its nuclear safety culture recognizing that efforts to date have not been fully effective. This communication shall include a brief summary of the subject of this settlement agreement regarding employee protection, the NRC's concerns expressed in its April 18, 2013, Chilling Effect Letter regarding CB&I's Lake Charles site, and CB&I's experience, insights, lessons learned, and corrective actions both taken and planned.

i. CB&I shall provide a copy of this communication to the NRC for prior review.

(b) Require copies of the communication described above to be posted for forty-five (45) days in prominent locations where employees congregate.

(c) Require all CB&I business units associated with NRC-regulated activities to hold all-hands meetings: (1) For management to discuss the importance of the above written communication;

and (2) to allow employees to provide feedback and ask questions of management related to the communication listed above.

2. By no later than three (3) months after issuance of the Confirmatory Order, CB&I shall ensure that its nuclear safety culture and safety conscious work environment policies, guidance (e.g., procedures), and related materials (e.g., brochures, posters) are in place, updated, and consistent with: (1) The NRC's March 2011 Safety Culture Policy Statement and associated traits; and (2) the NRC's May 1996 Safety Conscious Work Environment Policy Statement; and is informed by: (1) The NRC's Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment"; and (2) the industry's common language initiative (i.e., INPO 12-012, Revision 1, April 2013).

(a) Copies of these materials shall be provided to the NRC for review at least two (2) weeks prior to issuance.

(b) CB&I shall maintain and implement the materials in Section A.2.

(c) CB&I will distribute copies of these updated policies and brochures to employees, and inform employees where all related materials can be located. These policies and brochures shall be maintained and provided to all new employees during initial orientation.

3. A senior CB&I manager shall share the company's experience and insights with respect to improving nuclear safety culture, including lessons learned and actions taken in a presentation:

(a) To other nuclear vendors in the industry at the next NRC vendor workshop currently scheduled for June 2014. The presentation shall be submitted to the NRC for review within one (1) month of the scheduled workshop.

(b) If requested by the NRC, as a panelist in a breakout session at the 2014 Regulatory Information Conference.

B. Training

1. By no later than three (3) months after the issuance of the Confirmatory Order, CB&I shall hire a third-party, independent consultant, unrelated to the proceedings at issue, who is experienced with NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and safety conscious work environment policies, to assist CB&I to develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all CB&I employees.

(a) Training shall include case studies of discriminatory practices.

(b) Training shall define key terms included in employee protection regulations, nuclear safety culture and safety conscious work environment policy statements, and be informed by the industry's common language initiative (e.g., nuclear safety issue, protected activity, adverse action, nuclear safety culture traits).

(c) Training shall include topics such as behavioral expectations with regard to each nuclear safety culture trait. Training shall also include expectations for demonstrating support for raising nuclear safety and quality concerns, and all available avenues without fear of retaliation.

(d) Training on CB&I's Corrective Action Program will also be incorporated, and will emphasize the low threshold for reporting, employee's rights, responsibilities and expectations for raising nuclear safety and quality issues and initiating corrective action documentation.

(e) The training material shall be available to the NRC upon request.

2. *Supervisory Training:* Initial training, developed in paragraph B.1 above, for supervisors shall be piloted at least in part by a team consisting of the independent consultant and CB&I employees with expertise in these areas. Once finalized, this training will be conducted by the independent consultant at CB&I's Lake Charles site and may be conducted by CB&I employees trained by the team who developed and piloted the training at the other CB&I sites.

(a) The training shall commence within six (6) months after issuance of the Confirmatory Order.

(b) All training must be completed within one (1) year of the issuance of the Confirmatory Order.

(c) Refresher training:

i. Shall be primarily instructor led and be provided at least every two years for a period of four (4) years. This training may be provided by CB&I training staff.

ii. Thereafter, refresher training may be computer-based and shall be provided annually.

(d) Training records shall be retained consistent with applicable CB&I record retention policies and be made available to the NRC upon request.

3. CB&I shall primarily conduct instructor led employee protection, nuclear safety culture and safety conscious work environment training twice per year for any new supervisors hired after the initial training conducted as described in paragraphs 1 and 2 above.

4. *Employee (Non-Supervisory) Training:* Initial training, developed in paragraph B.1, for employees shall be piloted at least in part by a team consisting of the independent consultant and CB&I employees with expertise in these areas. Once finalized, this training will be conducted by the independent contractor at CB&I's Lake Charles site and may be conducted by CB&I employees trained by the team who developed and piloted the training at other CB&I sites.

(a) All employees training shall commence within six (6) months following completion of their designated line managements' training.

(b) All training must be completed within eighteen (18) months of the issuance of the Confirmatory Order.

(c) Refresher training may be computer-based and shall be provided annually.

(d) Training will primarily be instructor led for new employees as part of their orientation program/process.

(e) Training records shall be retained consistent with applicable CB&I record retention policies and be made available to the NRC upon request.

5. *Short-term Employee Training:* Employees employed by CB&I for less than ninety (90) days will receive a "one pager" that captures the key elements of the training developed in Section B.1 above.

C. Work Processes

1. By no later than six (6) months after issuance of the Confirmatory Order, where not already required by the applicable nuclear facility licensee, CB&I shall establish and maintain a uniform Executive Review Board (ERB) process to ensure independent management review of all proposed significant adverse actions (defined as three or more days off without pay up to and including termination for cause, but excluding reductions-in-force and other ordinary layoffs) for all of its employees to ensure these actions comport with applicable employee protection requirements and nuclear safety culture traits, and to assess and mitigate the potential for any chilling effect. The ERB shall review significant adverse actions prior to their execution.

(a) The ERB process and procedure(s) shall be informed by benchmarking at least 2 organizations in the nuclear industry with developed processes. The ERB process shall be included as a topic in the training developed in Section B.1.

(b) Each ERB shall be comprised of management personnel, including legal and/or human resources participation. The ERB shall be informed of any known relevant protected activity

engaged in by the subject employee, including via the Employee Concerns Program (ECP), but ECP personnel shall not be a participating member of the ERB.

(c) Upon request, CB&I shall make available copies of the ERB process and procedure, including documentation of ERB decisions made after the Confirmatory Order, to the NRC. CB&I shall maintain documentation of each ERB decision for a minimum of five years.

2. By no later than six (6) months after issuance of the Confirmatory Order, CB&I shall develop and maintain a single Employee Concerns Program (ECP) for all CB&I employees.

(a) The ECP, including position descriptions, shall be informed by benchmarking at least 2 organizations in the nuclear industry with developed processes.

(b) The ECP Functional Manager will report to the Vice President, Nuclear Safety for these activities, with day-to-day reporting and oversight by the Director of Nuclear Compliance.

(c) ECP personnel shall receive appropriate training, including investigative techniques.

3. CB&I shall develop and maintain individual performance appraisal assessment criteria for individual supervisor's appraisals to evaluate if these individuals are meeting CB&I's expectations with regards to employee protection, Nuclear Safety Culture and Safety Conscious Work Environment. Implementation will begin in the performance appraisal cycle in the year following completion of the supervisory training in B.2 above.

4. CB&I shall enhance or establish, where applicable, an active CAP trending process to include the ability to trend root and contributing causes related to CB&I's nuclear safety culture and incorporate trending information in an NEI 09-07 like process; implementation will begin in concert with the implementation of the activities as described in C.7.

5. By no later than six (6) months after issuance of the Confirmatory Order, CB&I shall develop and implement a process by which personnel engaged in work associated with NRC-regulated activities departing the company are given the opportunity to participate in an Employee Concerns Program Exit Interview/Survey to facilitate identification of nuclear safety issues, resulting trends and conclusions. These assessments and any actions resulting from the exit interviews shall be made available to the NRC for review upon request.

6. CB&I shall maintain a toll-free anonymous reporting service manned by an independent company for use by all its employees to raise nuclear safety and quality concerns.

7. By no later than six (6) months after issuance of the Confirmatory Order, CB&I shall establish and maintain a nuclear safety culture oversight program, including one or more committees advised by external consultants with extensive nuclear experience. This program will provide input to CB&I facility and site management as described below.

(a) The Program will assess at least twice a year the nuclear safety culture trends in process inputs that could be early indications of a nuclear safety culture weakness.

(b) The Program shall be informed by NEI's 09-07 guidance and by benchmarking at least 2 organizations in the nuclear industry with developed processes.

(c) The Program shall be directed by the Vice President Nuclear Safety/ Nuclear Safety Officer who shall oversee actions as appropriate.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. CB&I had previously established a CB&I Nuclear Safety Officer function to address company-wide nuclear safety culture and safety conscious work environment activities. The Vice President of Nuclear Safety has been assigned the duties of the Nuclear Safety Officer.

2. By no later than six (6) months after issuance of the Confirmatory Order, CB&I shall hire a third-party, independent consultant to perform tailored comprehensive nuclear safety culture assessments, including site surveys, of all CB&I nuclear business entities not already assessed by a licensee and perform assessments or surveys within twelve (12) months to ensure effectiveness of the Nuclear Safety Culture and Safety Conscious Work Environment programs.

(a) Follow-up assessments or surveys shall be conducted every two years for a total of 4 years. These future nuclear safety culture assessments or surveys shall be comparable to one another to allow for effective evaluation of trends.

(b) CB&I shall make available to the NRC, upon request, the results of the assessments or surveys, CB&I's analysis of the trends, results, and proposed corrective actions, if any, CB&I will take to address the results in order to verify that a healthy nuclear safety culture and safety conscious work environment exists at CB&I nuclear business entities.

(c) The results of each assessment or survey and CB&I's plan to address the results shall be communicated to employees within three (3) months of receiving the assessment/survey results.

3. As committed to in CB&I's May 17, 2013, response to the NRC's April 18, 2013, Chilling Effect Letter, CB&I shall:

(a) By September 20, 2013, perform an independent focused assessment to determine if effective programmatic controls are in place at CB&I Lake Charles in the following five areas: control of special processes; inspections; personnel training and qualification; instructions, procedures, and drawings; and corrective action. The assessment team will include, but will not be limited to, representatives from Southern Nuclear Operating Company, South Carolina Electric and Gas Company, and CB&I Power.

(b) Evaluate the results of the independent focused assessment and take corrective actions as appropriate by October 31, 2013.

4. As committed to in CB&I's May 17, 2013, response to the NRC's April 18, 2013, Chilling Effect Letter, CB&I reviewed the independent contractor's 2012 nuclear safety culture assessment report and initiated corrective actions, as necessary. The results of this report were communicated to the Lake Charles workforce at an all hands meeting on July 24, 2013.

E. Other

1. As committed to in CB&I's May 17, 2013, response to the NRC's April 18, 2013, Chilling Effect Letter, CB&I Lake Charles has entered the conditions associated with the Chilling Effect Letter into its corrective action program, characterized it as a significant condition adverse to quality, and completed a root cause analysis. By no later than six (6) months after issuance of the Confirmatory Order, CB&I shall evaluate the potential for similar issues at other CB&I nuclear sites.

2. By no later than three (3) months of issuance of the Confirmatory Order, CB&I will revise and maintain its Code of Corporate Conduct to include a provision stating that all employees have the right to raise nuclear safety and quality concerns to CB&I, the NRC, and Congress, or engage in any other type of protected activity without being subject to disciplinary action or retaliation and that no other corporate policy may supersede, limit, or otherwise discourage an employee's right to raise a nuclear safety or quality concern.

(a) The new section must be included and explained in the training conducted in Section B above.

In consideration for the actions and/or initiatives that CB&I agrees to undertake, as outlined above, the NRC agrees to the following:

1. The NRC agrees to exercise enforcement discretion and withdraw the Notice of Violation and Proposed Imposition of Civil Penalties relating to employee protection and the Shaw Code of Conduct (EA-2012-189).

2. The proposed settlement agreement does not affect other potential escalated enforcement actions, including ongoing investigations by the NRC's Office of Investigations. However, as part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, "Violations Identified Because of Previous Enforcement Action," the NRC will consider enforcement discretion for violations with similar root causes (i.e., EA-2012-189) that occur prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the Confirmatory Order. However, in the event that CB&I does not demonstrate that the work environment at its domestic sites and projects has improved as a result of the agreed-to corrective actions, the NRC may consider escalated enforcement action beyond the base civil penalty as provided for in the NRC Enforcement Policy.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by CB&I of good cause.

V

In accordance with 10 CFR 2.202, CB&I must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in

accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC Web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web

site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email at MSHD.Resource@nrc.gov, or by a toll-free call at 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary,

Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than CB&I requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), CB&I or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in

Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 16th day of September 2013.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2013-23318 Filed 9-24-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-27; NRC-2011-0115]

Pacific Gas and Electric Company; Humboldt Bay Independent Spent Fuel Storage Installation; Amendment to Materials License No. SNM-2514

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) reviewed an application by Pacific Gas and Electric (PG&E) Company for amendment of Materials License No. SNM-2514 which authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials. The amendment would allow PG&E to store greater than Class C process waste at its Humboldt Bay (HB) independent spent fuel storage installation (ISFSI).

ADDRESSES: Please refer to Docket ID NRC-2011-0115 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0115. 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.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC

Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The Humboldt Bay License Amendment Request No. 3 package is available electronically under ADAMS Accession No. ML12279A041.

• *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9225; email: William.Allen@nrc.gov.

SUPPLEMENTARY INFORMATION: By application dated September 8, 2010, as supplemented January 28, April 1, and September 9, 2011; June 19, June 25, and October 4, 2012; as well as January 16, March 7, and March 21, 2013, PG&E submitted to the NRC, in accordance with part 72 of Title 10 of the Code of Federal Register (10 CFR), a request to amend Materials License No. SNM-2514 for its HB ISFSI site located in Eureka, California. License No. SNM-2514 authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the HB Power Plant in an ISFSI at the power plant site for a term of 20 years. Specifically, the amendment proposed modifying License Condition 7.B to add "process wastes" to the Chemical and Physical Form description of greater than Class C waste authorized to be received at the HB ISFSI.

The NRC issued a letter dated April 14, 2011, notifying PG&E that the application was acceptable for review. In accordance with 10 CFR 72.16, a Notice of Docketing was published in the **Federal Register** on May 27, 2011 (76 FR 30980). The Notice of Docketing included an opportunity to request a hearing and to petition for leave to intervene.

The NRC prepared a Safety Evaluation Report (SER) that documents its review and evaluation of the amendment request. Also in connection with this action, the NRC prepared an

Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI). The Notice of Availability of the EA and FONSI for the HB ISFSI was published in the **Federal Register** on September 16, 2013 (78 FR 56944).

Upon completing its review, the staff determined the request complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), as well as the NRC's rules and regulations. As required by the Act and the NRC's rules and regulations in 10 CFR Chapter I, the staff made the appropriate findings which are contained in the SER (ADAMS Accession No. ML13196A475). The NRC approved and issued Amendment No. 3 to Materials License No. SNM-2514, held by PG&E for the receipt, possession, transfer, and storage of spent fuel and associated radioactive materials at the HB ISFSI. Pursuant to 10 CFR 72.46(d), the NRC is providing notice of the action taken. Amendment No. 3 was effective as of the date of issuance, September 17, 2013.

Dated at Rockville, Maryland, this 17th day of September, 2013.

For the Nuclear Regulatory Commission.

Michele Sampson,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013-23316 Filed 9-24-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on October 2, 2013, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 2, 2013—8:30 a.m. until 12:00 p.m.

The Subcommittee will review and discuss the results from the Workshop on Probabilistic Flooding Hazard Assessment (PFHA) and related issues. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and

actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301-415-7366- or Email: Derek.Widmayer@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146-64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: September 18, 2013.

Cayetano Santos,

Chief, Technical Support Branch Advisory Committee on Reactor Safeguards.

[FR Doc. 2013-23330 Filed 9-24-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION**Advisory Committee On Reactor Safeguards; Notice of Meeting**

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 2–5, 2013, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, October 2, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

1:30 p.m.–1:35 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

1:35 p.m.–3:30 p.m.: Spent Fuel Pool Study and Expedited Transfer of Spent Fuel to Dry Cask Storage (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the spent fuel pool study and expedited transfer of spent fuel to dry cask storage.

3:45 p.m.–5:45 p.m.: Development of Guidance in Support of Order EA–13–109 on Reliable Hardened Containment Vents (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the development of guidance in support of Order EA–13–109 on reliable hardened containment vents.

6:00 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed ACRS report on draft Final Regulatory Guide 1.79, “Preoperational Testing of Emergency Core Cooling Systems for Pressurized Water Reactors” and Regulatory Guide 1.79.1, “Initial Test Program of Emergency Core Cooling Systems for Boiling Water Reactors.”

Thursday, October 3, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

5:15 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting and on draft Final Regulatory Guides 1.79 and 1.79.1.

Friday, October 4, 2013, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Md

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [Note: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—The Committee will hold discussions with members of the ACRS panels performing the quality assessment of the following NRC research projects:

- NUREG/CR–7026: Application of Model Abstraction Techniques to Simulate Transport in Soils
- NUREG–2121: Fuel Fragmentation, Relocation, and Dispersal During the Loss-of-Coolant Accident

11:30 a.m.–12:30 p.m.: Draft Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will discuss the draft report on the biennial ACRS review of the NRC Safety Research Program.

1:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting and on draft Final Regulatory Guides 1.79 and 1.79.1.

Saturday, October 5, 2013 Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting and on draft Final Regulatory Guides 1.79 and 1.79.1.

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion of matters related to the

conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: Quynh.Nguyen@nrc.gov), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr.resource@nrc.gov, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC’s document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/ACRS/>.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and

3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: *September 18, 2013.*

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2013-23322 Filed 9-24-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on US-APWR; Notice of Meeting

The ACRS Subcommittee on US-APWR will hold a meeting on October 1, 2013, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, October 1, 2013—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review resolution of Generic Safety Issue-191, "Assessment of Debris Accumulation on PWR Sump Performance" and other issues associated with long-term core cooling for the US-APWR design. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and Mitsubishi Heavy Industries. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301-415-6855 or Email: Girija.Shukla@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy

cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146-64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: September 18, 2013.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013-23328 Filed 9-24-13; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70451; File No. SR-Phlx-2013-95]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Temporary Rule Change to Change the Expiration Date For Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday

September 19, 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 13, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a temporary rule to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 21, 2013, the Exchange filed to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday.³ The changes proposed in the Expiration Date Filing became effective on filing, but will not be operative until September 20, 2013. The Options Clearing Corporation ("OCC") and the options exchange industry have agreed to list certain Long Term Equity Options Series ("LEAPS") contracts expiring in January 2016 on September 16, 2013. The LEAPS expiring in January 2016 will be issued with a Friday expiration

³ See Securities Exchange Act Release No. 34-70259 (August 26, 2013), 78 FR 53809 (August 30, 2013)(SR-Phlx-2013-89)("Expiration Date Filing").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

date pursuant to the recently approved rule changes of OCC.⁴ In order not to disrupt the industry scheduled listing of the new LEAPS, the Exchange is proposing to adopt a temporary rule that would be immediately effective and remain operative through September 19, 2013, the proposed expiration date of the temporary rule. On September 20, 2013, the rule changes in the Expiration Date Filing would become operative.

The Exchange is proposing to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. More specifically, the Exchange is proposing to amend rule text referencing Saturday expirations. The Exchange notes, however, that this change will apply to all standard expiration contracts including those in which the rules are silent on the expiration date.⁵ The Exchange is making this filing to harmonize its rules in connection with a recently approved rule filing made by OCC which made substantially similar changes.⁶ The Exchange believes that the industry must remain consistent in expiration dates, and, thus, is proposing to update its rules to remain consistent with those of OCC. In addition, the Exchange understands that other exchanges have and will be filing similar rules to effect this industry-wide initiative.⁷

Most option contracts ("standard expiration contracts") currently expire at the "expiration time" (11:59 p.m. Eastern Time) on the *Saturday* following the third Friday of the specified expiration month (the "expiration date").⁸ With the Expiration Date Filing

and this filing, the Exchange has provided advance notice to its members and member organizations that the expiration date for standard expiration contracts is changing to the third Friday of the expiration month.⁹ (The expiration time would continue to be 11:59 p.m. Eastern Time on the expiration date.) The change would apply only to standard expiration contracts expiring after February 1, 2015, and the Exchange, similar to OCC, does not propose to change the expiration date for any outstanding option contracts. The change will apply only to series of option contracts opened for trading after the effective date of the OCC rule change and having expiration dates later than February 1, 2015. Option contracts having non-standard expiration dates ("non-standard expiration contracts") will be unaffected by this proposed rule change, except that FLEX options having expiration dates later than February 1, 2015 cannot expire on a Saturday unless they are specified by OCC as grandfathered.¹⁰

In order to provide a smooth transition to the Friday expiration OCC has begun to move the expiration exercise procedures to Friday for all standard expiration contracts even though the contracts would continue to expire on Saturday.¹¹ After February 1, 2015, virtually all standard expiration contracts will actually expire on Friday. The only standard expiration contracts that will expire on a Saturday after February 1, 2015 are certain options that were listed prior to the effectiveness of the OCC rule change, and a limited number of options that may have been listed prior to recent systems changes of the options exchanges. Phlx will not list any additional options with Saturday expiration dates falling after February 1, 2015. Phlx understands that the other exchanges are committed to the same listing schedule.¹²

The Exchange notes that OCC, industry groups, clearing members and the other exchanges have been active participants in planning for the transition to the Friday expiration.¹³ In March 2012, OCC began to discuss moving standard contract expirations to

Friday expiration dates with industry groups, including two Securities Industry and Financial Markets Association ("SIFMA") committees, the Operations and Technology Steering Committee and the Options Committee, and at two major industry conferences, the SIFMA Operations Conference and the Options Industry Conference.¹⁴ OCC also discussed the project with the Intermarket Surveillance Group and at an OCC Operations Roundtable. In each case, there was broad support for the initiative.¹⁵

Certain option contracts have already been listed with Saturday expiration dates as distant as December 2015 (which is the furthest out expiration as of the date of this filing). For these contracts, transitioning to a Friday expiration for newly listed option contracts expiring after February 1, 2015 would create a situation under which certain options with open interest would expire on a Saturday while other options with open interest would expire on a Friday in the same expiration month.

Clearing members have expressed a clear preference to not have a mix of options with open interest that expire on different days in a single month.¹⁶ Accordingly, OCC represented in its recently approved filing that it will not issue and clear any new option contracts with a Friday expiration if existing option contracts of the same options class expire on the Saturday following the third Friday of the same month. However, Friday expiration processing will be in effect for these Saturday expiration contracts. As with standard expiration options during the transition period, exercise requests received after Friday expiration processing is complete but before the Saturday contract expiration time will continue to be processed without fines or penalties.

Exchange Rule 1000(b)(21) defines "expiration date" in the case of options on stocks or Exchange-Traded Fund Shares as "11:59 p.m. Eastern Time on the Saturday immediately following the third Friday of the expiration month." This provision effectively limits the Exchange's ability to list monthly option contracts expiring on any day other than a Saturday prior to September 20, 2013, the operative date of the Expiration Date Filing. Thus, the Exchange is proposing to adopt a temporary rule to change the definition of "expiration date" to permit the scheduled listing of LEAPS expiring

⁴ See Securities Exchange Act Release No. 34-69772 (June 17, 2013), 78 FR 37645 (June 21, 2013)(order approving SR-OCC-2013-004).

⁵ These standard expiration contracts also include proprietary products of the Exchange such as Alpha Index option contracts (Rule 1009A(f)), U.S. Dollar-Settled Foreign Currency option contracts (Rule 1057) and PHLX FOREX option contracts (Rules 1000C-1009C). Standard expiration contracts also include the MSCI EM Index option contracts (Rule 1108A) and Full Value MSCI EAFE Index option contracts (Rule 1109A) which are listed pursuant to a license agreement with MSCI Inc. Mini Options expirations are the same as those for standard expirations and would be amended as specified in this proposal.

⁶ See note 4 *supra*.

⁷ See Securities Exchange Act Release Nos. 70091 (August 1, 2013), 78 FR 48212 (August 7, 2013)(SR-CBOE-2013-073); 69996 (July 17, 2013), 78 FR 44183 (July 23, 2013)(SR-MIAX-2013-32); 70373 (September 11, 2013)(SR-NYSEMKT-2013-73) and 70372 (September 11, 2013)(SR-NYSEARCA-2013-88).

⁸ Examples of options with non-standard expiration contracts include: FLEX options (Rule 1079), Quarterly Equity and Exchange-Traded Fund Shares ("ETFs") Option Series (Rule 1012, Commentary .08), Quarterly Expiring Index Options Series (Rule 1101A(b)(iv)), Quarterly Options Index

Series Program (Rule 1101A(b)(v)), Short Term Option Series (Rule 1012, Commentary .11) and Short Term Option Index Series (Rule 1101A(b)(vi)).

⁹ The Exchange has provided notice to its members and member organizations regarding the expiration date change as it relates to the 2016 LEAP replacement schedule in a memorandum dated August 13, 2013 sent to all option members and member organizations.

¹⁰ See note 8 *supra*.

¹¹ See note 4 *supra*.

¹² See note 7 *supra*.

¹³ See note 4 *supra*.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

in January 2016 planned for September 16, 2013.

More specifically, this rule change proposes to amend Rule 1000(b)(21), the definition of “expiration date” for each of options on stocks or Exchange-Traded Fund Shares, on a temporary basis to be consistent with the revised OCC definition and the changes to be implemented pursuant to the Expiration Date Filing.¹⁷ On September 19, 2013, the proposed rule change would expire and the rule changes in the Expiration Date Filing would become operative on September 20, 2013, thereby permitting the continuous listing of the LEAPS series referenced above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that keeping its rules consistent with those of the industry will protect all participants in the market by eliminating confusion. The proposed changes thus allow for a more orderly market by facilitating the industry-wide listing of LEAPS expiring in January 2016 by all options exchanges consistent with each option exchange’s rules.

In addition, the proposed changes will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities by aligning a pivotal part of the options processing to be consistent industry-wide in a similar timeframe. If the industry were to differ, investors would suffer from confusion and be more vulnerable to violate different exchange rules. The proposed changes do not permit unfair discrimination between any members because they are applied to all members equally. In the alternative, the Exchange believes that this proposal helps all members by keeping the Exchange consistent with OCC practices and those of other exchanges.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange does not believe the proposed rule change will impose a burden on intramarket competition because it will be applied to all members equally. In addition, the Exchange does not believe the proposed rule change will impose any burden to intermarket competition because it will be applied industry-wide and apply to all market participants. The proposed rule change is structured to enhance competition because adopting a rule on a temporary basis that permits the listing of options contracts with a Friday expiration date will facilitate an industry-wide listing of a new LEAPS series. This in turn will allow Phlx to be on equal footing and compete more effectively with other exchanges making similar rule changes.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. The Exchange notes, however, that a favorable comment was submitted to the OCC filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the

proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Exchange to implement the changes proposed herein immediately.

Under the proposal, the Exchange would amend certain of its rules pertaining to the trading of options in order to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday. The Exchange represents that a waiver of the 30-day operative delay is necessary and appropriate to not disrupt the industry scheduled listing of Long Term Equity Options Series (“LEAPS”) expiring in January 2016. Specifically, the Exchange notes that the Options Clearing Corporation and all national securities exchanges that trade options, including the Exchange, agreed on adding new LEAPS expiring in January 2016 on September 16, 2013, for those issues that are on the January expiration cycle. The Exchange further represents that this date was published in 2012 and has been relied upon across the industry.

Since the Exchange’s Rule 1000(b)(21) currently defines “expiration date” as the “Saturday immediately following the third Friday of the expiration month,” the Exchange will not be able to list monthly option contracts expiring on any day other than a Saturday until this proposal becomes effective. As such, the Exchange represents that it will be at a significant competitive

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78f (b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ *Id.*

disadvantage, and it requests the waiver to facilitate and coordinate with the listing of the 2016 LEAPS on September 16, 2013. Based on the Exchange representations above, and since the proposal is based, in part, on a proposal submitted by the OCC and approved by the Commission,²⁵ the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.²⁶

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-Phlx-2013-95 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-Phlx-2013-95. 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 publicly available. All submissions should refer to File Number SR-Phlx-2013-95 and should be submitted on or before October 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-23288 Filed 9-24-13; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 25, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Veronica Dymond, Public Affairs Specialist, Office of Communications, Small Business Administration, 409 3rd Street SW, 7th Floor, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Veronica Dymond, Public Affairs Specialist, 202-205-6746 veronica.dymond@sba.gov Curtis B. Rich, Management Analyst, 202-205-7030 curtis.rich@sba.gov.

Title: "Small Business Administration Award Nomination."

Abstract: Small Business owners or advocates who have been nominated for an SBA recognition award submit this information for use in evaluating nominees eligibility for an award: verifying accuracy of information submitted, and determining whether there are any actual or potential conflicts of interest. Awards are presented to winners during the Presidentially declared Small Business Week.

Description of Respondents: Nominated Small Business Owners or Advocates.

Form Number: 3300.

Annual Responses: 600.

Annual Burden: 1,200.

Curtis Rich,

Management Analyst.

[FR Doc. 2013-23259 Filed 9-24-13; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 25, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Elliston, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joan Elliston, Program Analyst, 202-205-7190 joan.elliston@sba.gov Curtis B. Rich, Management Analyst, 202-205-7030 curtis.rich@sba.gov.

Title: "8(A) SBD Paper and Electronic Application."

Abstract: The Small Business Administration needs to collect this information to determine an applicant's eligibility for admission into the 8(a) Business Development (BD) Program and for continued eligibility to participate in the Program. SBA also

²⁵ See *supra* note 4.

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 17 CFR 200.30-3(a)(12).

uses some of the information for an annual report to Congress on the 8(a) BD Program. Respondents can be individuals and firms making applications to the 8(a) BD Program, or respondents can be individuals and Participant firms revising information related to the 8(a) BD Program Annual Review.

Form Numbers: 1010, AIT, ANC, IND
Annual Responses: 3,788
Annual Burden: 15,248

Curtis Rich,

Management Analyst.

[FR Doc. 2013-23268 Filed 9-24-13; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 25, 2013.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, Supervisor System Accountant, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, System Accountant, 202-205-7559 carol.fendler@sba.gov Curtis B. Rich, Management Analyst, 202-205-7030 curtis.rich@sba.gov.

Title: "SBIC Financial Reports"

Abstract: To obtain the information needed to carry out its oversight responsibilities under the Small Business Investment Act, the Small Business Administration (SBA) requires Small Business Investment Companies (SBICs) to submit financial statements and supplementary information on SBA Form 468. SBA uses this information to monitor SBIC financial condition and regulatory compliance, for credit analysis when considering SBIC leverage applications, and to evaluate financial risk and economic impact for individual SBICs and the program as a whole.

Description of Respondents: Small Business Investment Companies.

Form Numbers: 468.1, .2, .3, .4.

Annual Responses: 1,050.

Annual Burden: 26,700.

Title: "Portfolio Financing Reports"

Abstract: To obtain the information needed to carry out its program evaluation and oversight responsibilities. SBA requires small business investment companies (SBICs) to provide information on SBA Form 1031 each time financing is extended to a small business concern. SBA uses this information to evaluate how SBICs fill market financing gaps and contribute to economic growth, and to monitor the regulatory compliance of individual SBICs. Individual SBICs and the program as a whole.

Description of Respondents: Small Business Investment Companies.

Form Number: 1031.

Annual Responses: 2,800.

Annual Burden: 560.

Curtis Rich,

Management Analyst.

[FR Doc. 2013-23262 Filed 9-24-13; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory Committee (AFMAC)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Audit and Financial Management Advisory Committee (AFMAC). The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 29, 2013, from 1:00 p.m. to approximately 4:00 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations. The

purpose of the meeting is to discuss the SBA's Financial Reporting, Audit Findings Remediation, Ongoing OIG Audits including the Information Technology Audit, FMFIA Assurance/A-123 Internal Control Program, Credit Modeling, LMAS Project Status, Performance Management, Acquisition Division Update, Improper Payments and current initiatives.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public, however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the AFMAC must contact Jonathan Carver, by fax or email, in order to be placed on the agenda. Jonathan Carver, Chief Financial Officer, 409 3rd Street SW., 6th Floor, Washington, DC 20416, phone: (202) 205-6449, fax: (202) 205-6969, email: Jonathan.Carver@sba.gov. Additionally, if you need accommodations because of a disability or require additional information, please contact Donna Wood at (202) 619-1608, email: Donna.Wood@sba.gov; SBA, Office of Chief Financial Officer, 409 3rd Street SW., Washington, DC 20416. For more information, please visit our Web site at <http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html>.

Dated: September 19, 2013.

Diana L. Doukas,

White House Liaison.

[FR Doc. 2013-23256 Filed 9-24-13; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 8482]

Culturally Significant Objects Imported for Exhibition Determinations: "Delacroix and the Matter of Finish"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and, as appropriate, Delegation of Authority No. 257 of April 15, 2003, I hereby determine that the objects to be included in the exhibition "Delacroix and the Matter of Finish," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display

of the exhibit objects at the Santa Barbara Museum of Art, Santa Barbara, California, from on or about October 27, 2013, until on or about January 26, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: September 18, 2013.

Lee Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013-23367 Filed 9-24-13; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 8480; Docket No. DOS-2013-0020]

Notice of Meeting of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee October 30 to November 1, 2013 at the U.S. Department of State, Annex 5, 2200 C Street NW., Washington, DC Portions of this meeting will be closed to the public, as discussed below.

During the closed portion of the meeting, the Committee will review the proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras* ("MOU") [Docket No. DOS-2013-0020]. Additionally, the Government of Honduras has asked that the MOU be amended to include material representing the Colonial and Republican periods of its cultural heritage. An open session to receive oral public comment on the proposal to extend and amend the MOU with Honduras will be held on Wednesday, October 30, 2013, beginning at 10:00 a.m. EDT.

Also, during the closed portion of the meeting, the Committee will conduct an interim review of the *Memorandum of Understanding Between the Government*

of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Pre-Hispanic Cultures of the Republic of El Salvador. Public comment, oral and written, will be invited at a time in the future should this Memorandum of Understanding be proposed for extension.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*; "Act"). The text of the Act and MOUs, as well as related information, may be found at <http://eca.state.gov/cultural-heritage-center>. If you wish to attend the open session on October 30, 2013, you should notify the Cultural Heritage Center of the Department of State at (202) 632-6301 no later than 5:00 p.m. (EDT) October 17, 2013, to arrange for admission. Seating is limited. When calling, please specify if you need reasonable accommodation. The open session will be held at 2200 C St. NW., Washington, DC 20037. Please plan to arrive 15 minutes before the beginning of the open session.

If you wish to make an oral presentation at the open session you must request to be scheduled by the above-mentioned date and time, and you must submit written comments, ensuring that they are received no later than October 17, 2013, at 11:59 p.m. (EDT), via the eRulemaking Portal (see below), to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to five (5) minutes to allow time for questions from members of the Committee. All oral and written comments must relate specifically to the determinations under 19 U.S.C. 2602 of the Act, pursuant to which the Committee must make findings. This statute can be found at the Web site noted above.

If you do not wish to make oral comment but still wish to make your views known, you may send written comments for the Committee to consider. Again, your comments must relate specifically to the determinations under 19 U.S.C. 2602 of the Act. Submit all written materials electronically through the eRulemaking Portal (see below), ensuring that they are received no later than October 17, 2013 at 11:59 p.m. (EDT). Our adoption of this procedure facilitates public participation, implements § 206 of the E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2915, and supports the Department of State's "Greening

Diplomacy" initiative which aims to reduce the State Department's environmental footprint and reduce costs.

Please submit comments only once using one of these methods:

- *Electronic Delivery.* To submit comments electronically, go to the Federal eRulemaking Portal (<http://www.regulations.gov>), enter the Docket No. DOS-2013-0020, and follow the prompts to submit a comment. Comments submitted in electronic form are not private. They will be posted on the site <http://www.regulations.gov>. Because the comments cannot be edited to remove any identifying or contact information, the Department of State cautions against including any information in an electronic submission that one does not want publicly disclosed (including trade secrets and commercial or financial information that is privileged or confidential pursuant to 19 U.S.C. 2605(i)(1)).

- *Regular Mail or Delivery.* If you wish to submit information that you believe to be privileged or confidential, and submitted in confidence pursuant to 19 U.S.C. 2605(i)(1), you may do so via regular mail, commercial delivery, or personal hand delivery to the following address: Cultural Heritage Center (ECA/P/C), SA-5, Fifth Floor, U.S. Department of State, Washington, DC 20522-0505. Only comments that you believe to be privileged or confidential will be accepted via those methods. Comments must be postmarked by October 17, 2013.

As a general reminder, comments submitted by fax or email are not accepted. In the past, twenty copies of texts over five pages in length were requested. Please note that this is no longer necessary; all comments, other than comments that you consider privileged or confidential, should now be submitted via the eRulemaking Portal only.

The Department of State requests that any party soliciting or aggregating comments received from other persons for submission to the Department of State inform those persons that the Department of State will not edit their comments to remove any identifying or contact information, and that they therefore should not include any information in their comments that they do not want publicly disclosed.

As noted above, portions of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that "The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements

of subsections (a) and (b) of sections 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title." Pursuant to law, executive order, and delegation of authority, I have made such a determination.

Personal information regarding attendees is requested pursuant to Public Law 99-399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107-56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS-D) database. Please see the Security Records System of Records Notice (State-36) at <http://www.state.gov/documents/organization/103419.pdf> for additional information.

Dated: September 16, 2013.

William J. Burns,

Deputy Secretary of State, Department of State.

[FR Doc. 2013-23373 Filed 9-24-13; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. FMCSA-2013-0306]

Privacy Act of 1974; Department of Transportation, Federal Motor Carrier Safety Administration; DOT/FMCSA 001 Motor Carrier Management Information System (MCMIS) System of Records

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice to amend a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation proposes to update and reissue a current Department of Transportation system of records titled, "Department of Transportation Federal Motor Carrier Safety Administration DOT/FMCSA 001 Motor Carrier Management Information System of Records." This system of records will allow the Department of

Transportation Federal Motor Carrier Safety Administration to collect and maintain records on drivers of commercial motor vehicles and individuals who are sole proprietor/driver (owner/operator) of a motor carrier or hazardous material shipper subject to the Federal Motor Carrier Safety Regulations.

As a result of a biennial review of this system, the Privacy Office has: added three routine uses of the MCMIS to permit disclosure of MCMIS records to the (1) National Transportation Safety Board; (2) to Federal, State, and local government agencies for the purposes of household goods (HHG) investigations and enforcing HHG statutes and regulation; and (3) to Federal, State and local government agencies for the purposes of driver, motor carrier, broker, and freight forwarder investigations, and enforcing commercial operating statutes and regulations.

Additionally this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Transportation's inventory of record systems.

DATES: Written comments should be submitted on or before October 25, 2013. The Department may publish an amended SORN in light of any comments received. This new system will be effective October 25, 2013.

ADDRESSES: You may submit comments, identified by docket number FMCSA-2013-0306, by any of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493-2251.

Instructions: You must include the agency name and docket number FMCSA-2013-0306. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act statement for the Federal Docket Management System in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Pam Gosier-Cox, FMCSA Privacy Officer, Federal Motor Carrier Safety Administration, Department of Transportation, Washington, DC 20590, 202-366-3655, pam.gosier-cox@dot.gov. For privacy issues please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; privacy@dot.gov; or 202.366.8135.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Motor Carrier Safety Administration (FMCSA) proposes to update and reissue a current DOT system of records titled, "Department of Transportation Federal Motor Carrier Safety Administration—DOT/FMCSA 001 Motor Carrier Management Information System of Records." The system is being modified to reflect changes in its Authorities and Routine Uses. The Authorities section has been updated by removing references to Executive Order 9397 as MCMIS is not used to "create permanent account numbers pertaining to individual persons." This updated system of records notice includes three new Routine Uses; the first new routine use permits sharing with the National Transportation Safety Board (NTSB) in connection with NTSB initiated investigations involving motor carriers, interstate motor carriers, and hazardous material shippers; the second permits sharing of MCMIS information with Federal, State, and local government agencies for the purposes of household goods investigations (HHG) and enforcing HHG statutes and regulations; and the third permits the sharing of MCMIS information with Federal, State, and local government agencies for the purpose of driver, motor carrier, broker, and freight forwarder investigations, and enforcing commercial operating statutes and regulations. The routine uses permitting the sharing of MCMIS information with contractors and to

safeguard against and respond to the improper disclosure breach of personally identifiable information have been removed to reflect the Department's establishment of General Routine Use permitting these sharing applicable to all DOT system of records.

The notice includes substantive clarifications to the Purposes of Collection and Records Disposition discussions to clarify the Department's practice which was not effectively described in previous publications of this system of records notice. Additionally this notice includes non-substantive changes to simplify the formatting and clarify the text of the previously published notice. This updated system will be included in DOT's inventory of record systems.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A "System of Records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information).

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

Department of Transportation (DOT)/ Federal Motor Carrier Safety Administration (FMCSA) DOT/ FMCSA—001 Motor Carrier Management Information System.

SYSTEM NAME:

Department of Transportation Federal Motor Carrier Safety Administration (FMCSA)—001 Motor Carrier Management Information System.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Volpe National Transportation Systems Center, U.S. Department of Transportation, Cambridge, MA 02142

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MCMIS records may contain personally identifiable information (PII) on the following's categories of individuals which may be retrieved by unique identifier associated with the individual;

1. Individuals who are the sole proprietor and/or owner of a motor carrier or hazardous material shipper subject to Federal Motor Carrier Safety Regulations and who have provided a social security number (SSN) in lieu of an employer identification number (EIN).

MCMIS records may also include personally identifiable information on the following categories of individuals, however this information is not retrieved by unique identifier associated with the individual.

1. Individuals who are owner/operators officers, managers, and employees of a motor carrier or hazardous material shipper subject to Federal Motor Carrier Safety Regulations.

2. Drivers of commercial motor vehicles who:

- Were involved in a recordable crash;
- Were the subject of a roadside driver/vehicle inspection;
- Are the subjects of an investigatory action; or
- Are employed by a motor carrier which is the subject of an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

MCMIS stores the following types of information:

- *Census Files*—These files contain the USDOT number, carrier identification, carrier address, type and size of operation, commodities carried, and other characteristics of the operation for interstate (and some intrastate) motor carriers, intermodal equipment providers, cargo tank facilities, and shippers. They include motor carrier PII consisting of social security numbers (SSN) and employee identification numbers (EIN).

- *Investigatory Files*—These files contain results of safety audits, compliance review investigations, and enforcement actions conducted by federal, state, and local law enforcement agencies. They include driver, co-driver, owner, officer, manager, and employee PII consisting of SSN and EIN.

- *Driver/Vehicle Safety Violations and Inspection Data*—This data is

collected during roadside inspections of drivers and vehicles and includes driver and co-driver PII consisting of names, dates of birth, vehicle license plate numbers, and state driver's license numbers.

- *Crash Data*—This data is collected from state and local police crash reports and includes driver and co-driver PII consisting of names, dates of birth, vehicle license plate numbers, and state driver's license numbers.

MCMIS Shares PII with the Following Systems or System Components:

- *Driver Information Resource (DIR)*—The DIR creates a driver profile using MCMIS crash data from the past five years and inspection data from the past three years. This profile shows PII data for the driver regardless of the employing carrier. The DIR also includes driver/vehicle safety violations and inspection data per the PSP description below. Access is restricted to FMCSA staff, FMCSA contractors and Motor Carrier Safety Assistance Program (MCSAP) State lead agencies.

- *Pre-Employment Screening System (PSP)*—The specific objectives of the PSP are aligned with the requirements of 49 U.S.C. 31150. The PSP will provide driver crash and inspection records from the DIR to requesting motor carriers that have a driver's consent. The PSP allows a driver to review his/her own driver-related data in the DIR.

- *Driver Safety Measurement System (DSMS)*—FMCSA utilizes MCMIS data in the DSMS to support the Compliance Safety Accountability (CSA) initiative and its Driver Safety Measurement System (DSMS). The DSMS uses driver/vehicle safety violations and inspection data and crash data to evaluate the safety performance of Commercial Motor Vehicle (CMV) drivers in seven categories. Access is restricted to FMCSA enforcement personnel, FMCSA Headquarters (HQ) staff and MCSAP State lead agencies.

- *Carrier Safety Measurement System (CSMS)*—FMCSA utilizes MCMIS data in the CSMS to support the CSA initiative and its DSMS. The CSMS uses driver/vehicle safety violations and inspection data and crash data to evaluate the safety of motor carriers. Access is restricted to FMCSA enforcement, federal and local law enforcement personnel, FMCSA HQ staff, MCSAP State lead agencies and law enforcement agencies that are FMCSA grantees. The objective of CSMS is to provide an assessment of a carrier's regulatory compliance and safety performance.

- *Safety Fitness Electronic Records (SAFER)*—The SAFER Web site receives

MCMIS driver/vehicle safety violations and inspection data and census data on a daily basis for report generation. Although SAFER receives driver-related PII from MCMIS, SAFER reports for the public users contain no PII. The driver-related PII from MCMIS is included on the Company Safety Profile reports that are requested by commercial motor carriers for their company and enforcement officers.

- **Enforcement Management Information System (EMIS)**—The EMIS is a web-based application used to monitor, track, and store information related to FMCSA enforcement actions. It manages and tracks enforcement actions associated with notifying the carrier, monitoring the carrier's response, determining whether further compliance action is required, and generating reports for various FMCSA Headquarters, FMCSA Service Center, and FMCSA Division staff. It is an authoritative source for FMCSA enforcement data. EMIS imports census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS for the purpose of automatically initiating UNFIT/UNSATISFACTORY cases within EMIS resulting from Safety Rating letters generated by MCMIS.

- **Analysis & information (A&I) Online**—The A&I is a web-based tool designed to provide quick and efficient access to descriptive statistics and analyses regarding commercial vehicle, driver, and carrier safety information. It is used by Federal, State and local law enforcement personnel, the motor carrier industry, insurance companies, and the general public. A&I imports census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS for the purpose of processing a monthly data snapshot of the MCMIS database.

- **ProVu**—ProVu is an application that allows Federal and State enforcement personnel and the motor carrier industry to electronically view standard motor carrier safety profile reports available from the FMCSA. ProVu imports driver/vehicle safety violations and inspection data and crash data in a standard report exported from MCMIS for the purpose of generating Company Safety Profile reports.

- **Compliance Analysis and Performance Review Information (CAPRI)**—CAPRI is used by Federal and State enforcement personnel when conducting compliance reviews and safety audits, specialized cargo tank facility reviews, household good investigations, and hazardous material (HM) shipper reviews. CAPRI includes worksheets for collecting census files,

investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS to track (1) hours of service, (2) driver qualifications, and (3) drug and alcohol compliance. It also creates the preliminary carrier safety fitness rating and various reports for motor carriers.

- **Sentri**—Sentri (formerly known as the Mobile Client Application) SENTRI is used by Federal and State enforcement personnel to access motor carrier and driver information. SENTRI combines roadside inspection, investigative, and enforcement functions into a single interface.

- **McQuery**—The MCMIS database is copied into McQuery, creating an exact image of the MCMIS database. The data in McQuery is used for responding to Freedom of Information Act (FOIA) requests and other requests for public information, generating special data requests for FMCSA, and supporting the operations of FMCSA.

- **GOTHAM**—GOTHAM is an internal FMCSA analysis system that utilizes selected extracts of MCMIS data and is only accessible through the DOT/FMCSA Intranet. GOTHAM imports census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS for the purpose of delivering standard reports via the Intranet.

- **Docket Management System (DMS)**—DMS is a National Transportation Safety Board NTSB system that stores investigative material in one of two ways. Documents that are categorized in DMS "For Official Use Only" ("OUO") are found only in the non-public side of the docket. In these instances, the documents are accessible only by those NTSB employees that are allowed access to NTSB Office of Highway Safety dockets. If a document is placed in the publicly available portion of DMS, NTSB redacts any PII.

- **New Application Screening (NAS)**—NAS is an application, which is populated by A&I, that identifies potential "chameleon carriers" within the FMCSA past and present carrier population. This tool provides you with the ability to search for specific carriers and identify relationships to other past and present carriers." Currently, NAS is available to select FMCSA personnel. It is searchable by motor carrier name, state, and address.

MCMIS SHARES NON-PII WITH THE FOLLOWING FMCSA SYSTEMS OR SYSTEM COMPONENTS:

- **Query Central (QC)**—QC is a secure web application that provides Federal and State safety enforcement personnel with a single location where they can enter one query and obtain targeted

safety data on commercial motor vehicle (CMV) carriers, vehicles, and drivers from multiple sources in FMCSA and Customs and Border Patrol. QC does not maintain a database of its own, but instead pulls data from the authoritative sources in real-time. QC utilizes MCMIS to verify carrier information. QC displays privacy-related information on drivers from MCMIS.

- **Licensing and Insurance System (L&I)**—The L&I system is used to enter and display licensing and insurance information regarding authorized for-hire motor carriers, foreign motor carriers, freight forwarders, and property brokers. It is the authoritative source for FMCSA licensing and insurance data. L&I is part of the registration process. L&I imports information from MCMIS as follows:

- Data about carriers that received unsatisfactory ratings;
- Data about Out-of-Service carriers; and
- USDOT numbers for synchronization with docket numbers.

- **Hazmat Registration (HMReg)**—HMReg exports data from MCMIS to the Pipeline and Hazardous Materials Safety Administration (PHMSA) database server in response to HAZMAT registration data requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 502, 504, 506, 508, Chapter 139, and 49 CFR 1.73.

PURPOSE(S):

The purpose of this system is to provide a central collection point for records on some intrastate motor carriers, interstate motor carrier, hazardous material shipper, freight brokers and freight forwarders in order to facilitate the analysis of data required to administer and manage the agency's safety and commercial enforcement programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. 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 DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: To federal, state, local, and foreign government agencies for the purposes of enforcing motor carrier and Hazardous Materials shipper safety.

2. To State lead agencies and other law enforcement grantees under the FMCSA Motor Carrier Safety Assistance Grant Program and Border Enforcement Grant program, which is a federal grant

program that provides financial assistance to states for their work in reducing in the frequency and severity of CMV crashes and hazardous materials incidents.

3. To the National Transportation Safety Board (NTSB) in connection with NTSB investigations involving motor carriers, interstate motor carriers, and hazardous material shippers.

4. To Federal, State, and local government agencies for the purposes of household goods investigations (HHG) and enforcing HHG statutes and regulations.

5. To Federal, State and local government agencies for the purposes of driver, motor carrier, broker, and freight forwarder investigations, and enforcing commercial operating statutes and regulations.

6. See "Prefatory Statement of General Routine Uses" (available at <http://www.dot.gov/privacy/privacyactnotices>). Other possible routine uses of the information, applicable to all DOT Privacy Act systems of records, are published in the **Federal Register** at 75 FR 82132, December 29, 2010, and 77 FR 42797, July 20, 2012 under "Prefatory Statement of General Routine Uses" (available at <http://www.dot.gov/privacy/privacyactnotices>).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

MCMIS records are stored in an automated system operated and maintained at the Volpe National Transportation Systems Center (Volpe Center) in Cambridge, MA.

RETRIEVABILITY:

Records may be retrieved by; individuals' name, Social Security Number, Employer Identification Number, company name, trade name, and geographical location.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT 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 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:

Records will be retained and disposed in accordance with National Archives and Records Administration (NARA) retention disposition schedule (RDS) NI-557-05-007 item #5. Master data files are retained on a permanent basis. For a complete discussion of the RDS please see www.nara.gov.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Division Chief, IT Development Division; Office of Information Technology; Federal Motor Carrier Safety Administration; U.S. Department of Transportation; 1200 New Jersey Avenue SE; W68-330; Washington, DC 20590

NOTIFICATION PROCEDURE:

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 Tiffanie Coleman, FMCSA FOIA Officer whose contact information can be found at <http://www.dot.gov/foia> under "Contact Us." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Departmental Freedom of Information Act Office, U.S. Department of Transportation, Room W94-122, 1200 New Jersey Ave. SE., Washington, DC 20590, ATTN: FOIA request.

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 49 CFR Part 10. 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 Freedom of Information Act Officer, <http://www.dot.gov/foia> or 202.366.4542. In addition you should provide the following:

An explanation of 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;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

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 are obtained from roadside driver/vehicle inspections and crash reports submitted by state and local law enforcement agencies and from investigations performed by state and federal investigators. State officials and FMCSA field offices forward safety information to MCMIS immediately after it has been compiled and processed locally.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a), portions of this system are exempt from the requirements of subsections (c)(3), (d), (e)(4)(G)-(I) and (f) of the Act, for the reasons stated in DOT's Privacy Act regulation (49 CFR Part 10, Appendix, Part II, at A.8). See 66 FR 20406, April 23, 2001. A copy of this Notice and accompanying Privacy Act Exemptions Final Rule may be found on the DOT Privacy Office Web site—www.dot.gov/privacy.

Issued in Washington, DC, on September 18, 2013.

Claire W. Barrett,

Departmental Chief Privacy Officer.

[FR Doc. 2013-23131 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans) is issuing this notice to advise the public that Federal actions taken by the California Department of

Transportation (Department) pursuant to its assigned responsibilities under 23 U.S.C. 327, as well as actions by other Federal agencies, are final within the meaning of 23 U.S.C. 139 (I)(1). The actions relate to a proposed Interstate 5 Bus/Carpool Lanes Project (Post Miles 9.7 to 22.5), south of Elk Grove Blvd. to United States (US) Highway 50 in Sacramento County, State of California. This action grants approval for the project.

DATES: By this notice, FHWA, on behalf of the Department, is advising the public of final actions subject to 23 U.S.C. 139 (I)(1). These actions have been taken by the Department pursuant to its assigned responsibilities under 23 U.S.C. 327, as well as by other Federal agencies. A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 22, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Kendall Schinke, Senior Environmental Planner, California Department of Transportation, 2379 Gateway Oaks Dr., Suite 150, Sacramento, CA 95833, weekdays between 8 a.m. and 4:30 p.m., (530) 741-4394, kendall_schinke@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of California. The Interstate 5 Bus/Carpool Lanes Project would improve operations and safety of Interstate 5 in Sacramento County, California. This would be accomplished by adding bus/carpool lanes in the median the entire length of the project. The actions by the Department and other Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/ Finding of No significant Impact (FONSI) for the project, approved by the Department on June 26, 2013. The EA/ FONSI and other project records are available by contacting the Department at the address provided above. The EA/ FONSI can be viewed and downloaded from the project Web site at www.dot.ca.gov/dist3/Projects/00165/prjindex.htm or viewed at the Sacramento County Public Library—Sacramento Public Library Central Library 828 I Street, Sacramento, CA 95814. Comments or questions concerning this proposed action should

be directed to Caltrans at the address provided above.

This notice applies to the Department and other Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following Federal environmental statutes and Executive orders:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

7. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

8. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898,

Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1).

Matthew Schmitz,

Director State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013-23350 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2013-0002-N-20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking an extension of the following currently approved information collection activities. These information collection activities received a six-month emergency approval from OMB on August 29, 2013. FRA seeks this extension while it is determining the proper course of action to take to ensure that certain unattended trains and vehicles on mainline track or mainline siding outside of a yard or terminal, particularly ones transporting hazardous materials, are properly secured against unintended movement. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than November 25, 2013.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-0601." Alternatively, comments may be transmitted via facsimile to (202) 493-6216 or (202) 493-6497, or via email to Mr. Brogan at Robert.Brogan@dot.gov, or to Ms. Toone at Kim.Toone@dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Ms. Kimberly Toone, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44

U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)-(iv); 5 CFR 1320.8(d)(1)(I)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Emergency Order No. 28, Notice No. 1.

OMB Control Number: 2130-0601.

Abstract: FRA has determined that public safety compelled the issuance of Emergency Order No. 28, which requires railroads operating on the general system of transportation to

implement additional processes and procedures to ensure that unattended trains and vehicles on mainline track or sidings are properly secured against unintended movement. Emergency Order No. 28 was published in the **Federal Register** on August 7, 2013, in response to the catastrophic accident that occurred in Lac-Mégantic, Quebec, Canada, on July 6, 2013. See 78 FR 48218. Emergency Order No. 28 is intended to address some of the human factors failures that may cause unattended equipment to be improperly secured in order to protect the general public and communities near the general system of rail transportation and railroad equipment that is used on it against derailment situations similar to that which occurred at Lac-Mégantic.

The collection of information is being used by FRA to ensure that railroads and their employees fulfill all the requirements that are set out in the Emergency Order. Among other purposes, FRA will use the information collected to verify that railroads develop, adopt, and comply with a plan that identifies specific locations and circumstances when a train or vehicle transporting the type and quantity of hazardous materials described in Appendix A of this Emergency Order shall be left unattended on a mainline track or mainline siding outside of a yard or terminal. FRA will also use the collection of information to confirm that railroads review and verify and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment. Railroads must ensure the means of verifying that the number is appropriate. FRA will use the collection of information to enforce compliance, where necessary.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: One-time; on occasion.

Respondent Universe: 655 railroads; 100,00 Railroad Employees.

Reporting Burden:

Emergency order item No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
(1) RR Plans identifying specific locations and circumstances of trains carrying hazardous materials:	655 railroads	491 plans	40 hours	19,640
—Revised Plans	655 railroads	50 revised plans	10 hours	500
—Notifications to FRA by RR of Plan Development Prior to Its Operation Pursuant to Plan.	655 railroads	50 notifications	30 minutes ..	25
(2)(a)—RR Development of Process for Securing Unattended Trains or Vehicles:	655 railroads	491 processes	60 minutes ..	491
(b)—RR Employees communication to dispatchers of information regarding securement of train.	100,000 Employees	26,000 exchanges/com- munications.	5 minutes	2,167

Emergency order item No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
(c)—Dispatcher's Record of Information Exchanged or Communicated.	655 railroads	26,000 records	2 minutes	867
(d)—Train Dispatcher or Other Qualified Employee Verification and Confirmation of Train Securement Meeting RR's Requirements.	655 railroads	26,000 verifications and confirmations.	2 minutes	867
(3) RR Review and Revision of Existing Procedures and Processed Related to the number of Hand Brakes Set on All Unattended Trains:	655 railroads	491 revised procedures and processes.	6 hours	2,946
(4) RR Revision of Operating Rules and Practices to Require Job Briefing of Train Securement: —Daily Job Briefings	655 railroads	491 revised operating rules and practices.	2 hours	982
(5) Development of RR Procedure to Ensure a Qualified Employee Inspects All Equipment Visited by Emergency Responder for Proper Securement Before Train or Vehicle is Left Unattended: —Inspections of Equipment	100,000 RR Employees ... 655 railroads	23,400,000 briefings	30 seconds .. 60 minutes ..	195,000 491
(6) RR Employees Copy of FRA EO 28:	655 railroads	1,000 inspections	4 hours	4,000
	100,000 RR Employees ...	100,000 copies	1 minute	1,667

Total Estimated Responses:
23,581,555.
Total Estimated Annual Burden:
229,643 hours.
Status: Regular Review.
Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.
Rebecca Pennington,
Chief Financial Officer.
[FR Doc. 2013–23255 Filed 9–24–13; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0017; Notice 2]

Fuji Heavy Industries U.S.A., Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Grant of petition.

SUMMARY: Fuji Heavy Industries U.S.A., Inc., on behalf of Subaru of America (Fuji), has determined that certain 2013 Subaru XV Crosstrek passenger cars manufactured between May 17, 2012, and February 7, 2013, do not fully comply with paragraphs S6.1 and S6.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. Fuji has filed an appropriate report dated January 29, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Mr. Luis Figueroa, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5298, facsimile (202) 366–7002.

SUPPLEMENTARY INFORMATION:

I. Fuji's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Fuji has petitioned for an exemption from the notification and remedy requirements of 39 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30 day public comment period, on February 25, 2013 in the **Federal Register** (78 FR 12827). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. The follow the online search instructions to locate docket number “NHTSA–2013–0017.”

II. Vehicles Involved: Affected are approximately 23,600 model year 2013 Subaru XV Crosstrek passenger cars manufactured between May 17, 2012, and February 7, 2013.

III. Rule Text: Paragraphs S6.1 and S6.2 of FMVSS No. 205 specifically states:

S6.1 A prime glazing material manufacturer must certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which this standard applies that is designed—

- (a) As a component of any specific motor vehicle or camper; or
- (b) To be cut into components for use in motor vehicles or items of motor vehicle equipment.

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI Z26.1–1996, in

letters and numerals of the same size, the symbol “DOT” and a manufacturer's code mark that NHTSA assigns to the manufacturer.

IV. Summary of FUJI'S Analyses: Fuji explains that the noncompliance is that, due to a labeling error, the glazing markings on the rear window of the subject vehicles lack the symbol “DOT”, the manufacturer's code mark (i.e. 44), and the AS3 code mark and thus do not conform to the requirements of 49 CFR 571.205 paragraphs S6.1 and S6.2.

Fuji contends that the rear glazing of the affected vehicles otherwise meets all marking and performance requirements of FMVSS No. 205 and ANSI Z26.1 and NHTSA has previously noted that “The stated purposes of FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions” (64 FR 70116). Because the affected glazing fully meet all of the applicable performance requirements, Fuji believes the absence of the “DOT” symbol, the manufacturer's number (i.e. “44”), and the AS3 code mark have no effect upon the ability of the glazing to satisfy these stated purposes and thus perform in the manner intended by FMVSS No. 205.

Fuji stated that it is not aware of any crashes, injuries, customer complaints or field reports associated with this noncompliance.

Fuji also expressed its belief that NHTSA has previously granted similar petitions involving the omission of FMVSS No. 205 markings.

Fuji has additionally informed NHTSA that it has corrected the noncompliances so that all future

production of the vehicles will comply with FMVSS no 205.

In summation, Fuji believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

V. NHTSA'S Decision: FMVSS No. 205 specifies labeling and performance requirements for automotive glazing. Paragraph S6 of FMVSS No. 205 requires glazing material manufacturers to certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which the standard applies. A prime glazing material manufacturer is required to mark its glazing by adding the marks required in Section 7 of ANSI Z26.1 (1996) including the FMVSS certification symbol "DOT," the item of glazing code mark (in this case "AS3") and a manufacturer's code mark as assigned by the NHTSA's Office of Vehicle Safety Compliance (in this case "44").

NHTSA has reviewed and accepts Fuji analyses that this noncompliance is inconsequential to motor vehicle safety. Fuji has provided documentation that the windows do comply with all safety performance requirements of the standard. This documentation is a surrogate for the FMVSS certification "DOT" labeling. NHTSA also believes that the lack of the manufacturer's code and the item of glazing code labeling would not result in inadvertent replacement of the windows with the wrong glazing. Broken tempered glass can readily be identified as tempered glass, rather than plastic or laminated glass. Anyone who intended to replace the window with an identical tempered glass window would have to obtain the glazing from Fuji or a major automotive parts manufacturer since tempered glass automotive windows cannot be easily manufactured by small field facilities. Fuji, or an automotive parts supplier would be able to identify the correct replacement window by use of their replacement parts identification systems.

In consideration of the foregoing, NHTSA has decided that Fuji has met its burden of persuasion that the FMVSS No. 205 noncompliance in the glazing material identified in Fuji's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Fuji's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 23,600 vehicles that Fuji no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Fuji notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.95 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013-23361 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0083; Notice 1]

Spartan Motors, Inc. on Behalf of Spartan Motors Chassis, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: Spartan Motors, Inc. on behalf of Spartan Motors Chassis, Inc. (Spartan) has determined that certain model year 2008 through 2013 Spartan Gladiator and MetroStar chassis cabs do not fully comply with paragraph S5.3.3.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems*. Spartan has filed an appropriate report dated April 19, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

DATES: October 25, 2013.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of

this notice and be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at http://www.regulations.gov by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. *Spartan's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Spartan submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C.

Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Spartan's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Chassis Cabs Involved*: Affected are approximately 26 model year 2008 through 2013 Spartan Gladiator and MetroStar chassis cabs manufactured between April 9, 2008 and January 14, 2013.

III. *Noncompliance*: Spartan explains that it has determined that certain emergency rescue chassis cabs built between April 9, 2009 and January 14, 2013 may not meet the brake actuation time for trucks as identified in § 5.3.3 of FMVSS No. 121.

IV. *Rule Text*: Section S5.3.3 of FMVSS No. 121 specifically states:

S5.3.3 Brake actuation time. Each service brake system shall meet the requirements of S5.3.3.1 (a) and (b).

S5.3.3.1(a) With an initial service reservoir system air pressure of 100 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 psi in not more than 0.45 second in the case of trucks and buses, * * *

V. *Summary of Spartan's Analyses*: Spartan stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

Section 5.3.3.1 of FMVSS No. 121 defines the amount of pressure (60 psi) for, in this case, the front brake chambers. Further, it also defines a "not to exceed" time (0.45 seconds) in which that pressure at the brake chamber must be achieved. This is not interpreted to mean brakes are to be applied at 60 psi but rather a certain pressure at the brake chamber will be achieved. Brakes will be applied nearly instantaneously after actuation of the treadle valve.

Spartan conducted three tests on a sample of three chassis cabs of similar brake system configurations. Detailed results from the testing are shown in Spartan's petition. The reported average was used to determine the actual results in comparison to the requirements. By rounding the average of the three tests for each sample, Spartan Chassis identified it exceeds the requirements by 0.01 second.

The measurement of time, in this case, is for when air pressure at the chamber reaches 60 psi. As stated, the brakes are still being applied irrespective of achieving the 60 psi pressure at the front brake chambers. The impact of being 0.006 to 0.01

seconds above the requirement of 0.45 seconds would have very little impact (approximately 1 ft @ 60 mph) to stopping distance of the vehicle and would not impede the capability of the vehicle being able to stop.

According to Driver's License Manual, stopping distance is impacted by driver perception distance and reaction distance. Other factors include speed and gross weight of the vehicle. These attributes would appear to have a more significant impact to overall stopping distance than 0.01 second timing for air pressure to reach 60 psi at the front brake chambers.

From a speed of 60 mph, vehicles affected by this condition are required to achieve a complete stop in 310 ft. At this speed, it would take approximately 3.52 seconds for vehicles to stop at this rate of speed. Vehicles affected by the condition that has resulted in the identified non-compliance are capable of stopping within the distance of 310 ft as prescribed by FMVSS No. 121 and would still be able to stop within the required stopping distance.

Spartan has additionally informed NHTSA that it has corrected the noncompliance so that all future production Gladiator and MetroStar chassis cabs will comply with FMVSS No. 121.

In summation, Spartan believes that the described noncompliance of the subject chassis cabs is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, 26 Gladiator and MetroStar chassis cabs that Spartan no longer controlled at the time it determined that the noncompliance existed. Therefore, these provisions only apply to the 26 Chassis cabs that Spartan no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction for delivery or introduction into interstate commerce of the noncompliant vehicles under their

control after Spartan notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013-23359 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0142; Notice 2]

Nissan North America, Incorporated, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Grant of Petition.

SUMMARY: Nissan North America, Inc. (Nissan) has determined that certain model year (MY) 2009 through 2012 Nissan Titan trucks manufactured from January 31, 2008 to July 17, 2012 and MY 2012 Nissan NV trucks, buses or multipurpose passenger vehicles (MPVs) manufactured from December 20, 2010 to July 17, 2012, do not fully comply with paragraph S3.1.4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*. Nissan has filed an appropriate report dated July 23, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Mr. Vince Williams, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-2319, facsimile (202)366-5930.

SUPPLEMENTARY INFORMATION:

I. *Nissan's Petition*: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556), Nissan submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Nissan's petition was published, with a 30-day public comment period, on July 5, 2013, in the **Federal Register** (78 FR 40546.) No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site

at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA–2012–0142.”

II. *Vehicles Involved*: Affected are approximately 45,167 MY 2009 through 2012 Nissan Titan trucks manufactured from January 31, 2008 to July 17, 2012 and MY 2012 Nissan NV trucks, buses or MPVs manufactured from December 20, 2010 to July 17, 2012 equipped with steering column-mounted transmission shift levers with a manual mode.

III. *Rule Text*: Paragraph S3.1.4.1 of FMVSS No. 102 specifically states:

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

- (a) The ignition is in a position where the transmission can be shifted; or
- (b) The transmission is not in park.

IV. *Summary of Nissan’s Analyses*: Nissan explains that the noncompliance is that on the affected vehicles a unique sequence of actions can lead the shift position indicator to incorrectly display the shift position as required by paragraph S3.1.4.1 of FMVSS No. 102.

Nissan further explains that the noncompliance occurs when the following sequences are accomplished:

- (1) The transmission is shifted into “manual” shift mode by pressing the “manual” shift mode button; and
- (2) The ignition is switched from the “ON” position directly into “ACC” position, which shuts off the engine.

During the time in which the ignition is in the “ACC” mode, the gear position indicator displays the last “manual” gear position of the transmission ([1]^M through [4]^M) prior to the “ACC” mode. If the key is not rotated from the “ACC” position and the shift lever is moved, the last “manual” gear position will be displayed regardless of the shift lever position (the engine will not be running). Turning the ignition to either the “ON” or “OFF” positions will reset the indicator, at which point the correct position will be displayed.

This issue only occurs when the ignition is switched from “ON” into “ACC” mode and the engine is off. Further, the vehicle cannot be restarted unless the ignition is switched out of “ACC” at which point the shift position indicator would reset and show the correct position. Likewise, if the ignition is turned to the “OFF” position to turn the vehicle completely off, the position indicator resets itself and will display the correct shift position the next time the vehicle is started.

Nissan believes the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The vehicle cannot be operated in the noncompliant condition. The noncompliant condition only exists when the vehicle ignition is switched from the “ON” directly into the “ACC” mode and exists only for the time that the ignition remains in “ACC” mode. The engine is not running at this time. If the transmission is shifted into park while in “ACC” mode, it cannot be removed from park unless the ignition is switched to the “ON” position. If the ignition is switched to either the “ON” position (to start the vehicle), or the “OFF” position (to remove the key and exit the vehicle) the shift indicator resets to the correct position and the vehicle is no longer in the noncompliant condition.

2. The sequence of events that leads to the noncompliant condition is exceptionally rare. This sequence, stated in the description of the noncompliance, is not one that a driver should encounter in the typical operation of the vehicle. If a driver were to happen into this circumstance, the condition is so fleeting that the vehicle would likely be taken out of the noncompliant condition almost immediately. This is evidenced by the fact that some of the affected vehicles have been on the road for four years and Nissan has not received any customer complaints or warranty claims regarding the issue.

3. The likelihood of an affected vehicle being inadvertently left out of park is nearly impossible in this case. When the noncompliant condition occurs, the shift indicator states, incorrectly, that the vehicle is in a “manual” forward gear regardless of the actual shifter position. Due to the geometry of the shifter, the park position should be apparent to the driver even without the assistance of the shift indicator.

4. Furthermore, since the owner cannot remove the mechanical key from the ignition while the transmission is in any position except for park due to the transmission shift interlock, it is unlikely that a vehicle would be left unattended in the noncompliant condition. Given this, the driver will either exit the vehicle without the key or the driver will remain in the vehicle.

If the driver attempts to leave the vehicle without the key, an audible warning (as required by FMVSS No. 114) will sound, alerting the driver that the key is in the ignition. This should reduce the possibility of the operator leaving the vehicle.

If the driver remains in the vehicle, he or she will attempt to restart the vehicle. An attempt to restart will take the ignition from the “ACC” position to the ON position and the indicator will reset to the correct position.

5. As NHTSA recognized in proposing FMVSS No. 102 (see 49 FR 32409–32411, August 25, 1988,) the purpose of the display requirement for PRNDM information is to “provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors.” Thus, the primary function of the transmission display is to inform the driver of gear selection and relative position of the gears while the engine is running. Except for the absence of the required transmission shift position during the one circumstance described above, which occurs when the engine is not running, all of the 45,167 affected vehicles otherwise comply with paragraph S3.1.4.1 of FMVSS No. 102.

Nissan also stated its belief that in similar situations, NHTSA has granted the applications of other petitioners.

Nissan has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 102.

In summation, Nissan believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

V. *NHTSA’S Decision*: NHTSA has reviewed Nissan’s analyses that the subject noncompliance is inconsequential to motor vehicle safety. Considering the rare occurrence where the shift position indicator fails to correctly display the shift position, the noncompliance poses little if any risk to motor vehicle safety. This is because the vehicle cannot be started or operated in a manual gear position of the transmission, i.e., 1 through 4. In addition, the mechanical ignition key in these vehicles cannot be removed unless the transmission control is in “park,” and an audible warning required by FMVSS No. 114 would alert a driver exiting the vehicle if the key remained in the starting system. Furthermore, if the driver places the vehicle in park, the shifter cannot be moved to another position without rotating the key from the accessory position, at which point shift position indicator would reset and show the correct shift position.

In consideration of the foregoing, NHTSA has decided that Nissan has met its burden of persuasion that the FMVSS No. 102 noncompliance is inconsequential to motor vehicle safety. Accordingly, Nissan's petition is hereby granted and Nissan is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 45,167 vehicles that Nissan no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Nissan notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013-23360 Filed 9-24-13; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0064; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1988-1996 Alpina B10 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 1988-1996 Alpina B10 passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for

importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: October 25, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001

- **Hand Delivery:** Deliver comments by hand to: 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.

- **Electronically:** Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493-2251

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied,

notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

101 Innovations, LLC. of Lummi Island, WA (Registered Importer 07-350) has petitioned NHTSA to decide whether nonconforming 1988-1996 Alpina B10 passenger cars are eligible for importation into the United States. 101 Innovations believes these vehicles are capable of being modified to meet all applicable FMVSS.

In the past, NHTSA has granted import eligibility to a number of Alpina vehicles that were derived from BMW vehicles. These include the 2005-2007 (manufactured before September 1, 2006) Alpina B5 series, 1987-1994 Alpina B11 sedan, the 1989-1996 Alpina B12 2-door coupe, and the 1988-1994 Alpina B12 5.0 sedan (assigned vehicle eligibility numbers VCP-53, VCP-48, VCP-43, and VCP-41, respectively). These eligibility decisions were based on petitions submitted by Registered Importers (RIs) who claimed that the vehicles were capable of being altered to comply with all applicable FMVSS.

Because those vehicles were not manufactured for importation into and sale in the United States, and were not

certified by their original manufacturer (Alpina), as conforming to all applicable FMVSS, they cannot be categorized as “substantially similar” to the vehicle that is the subject of the petition at issue for the purpose of establishing import eligibility for that vehicle under 49 U.S.C. 30141(a)(1)(A). Therefore, the agency will consider 101 Innovation’s petition as a petition pursuant to 49 U.S.C. 30141(a)(1)(B).

101 Innovations submitted information with its petition intended to demonstrate that non-U.S. certified 1988–1996 Alpina B10 passenger cars, as originally manufactured, conform to many FMVSS. Specifically, the petitioner claims that non-U.S. certified 1988–1996 Alpina B10 passenger cars, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 107 *Reflective Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Disks, and Hub Caps*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: replacement of the instrument cluster with components from the U.S.-model BMW E34 5-series and reprogramming the vehicle computer to operate the necessary safety systems.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*: replacement of the headlamps and front and rear marker lights with components from the U.S.-model BMW E34 5-series, and installation of the high-mounted stop light assembly from the U.S.-model BMW E34 5-series.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: replacement of the passenger side

rearview mirror with a component from the U.S.-model BMW E34 5-series or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention*: activation of occupant warning chime by reprogramming vehicle modules and inspection and replacement of ignition switch with component from the U.S.-model BMW E34 5-series if necessary to incorporate key detection micro switch.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate near the left windshield pillar.

Standard No. 118 *Power-operated Window, Partition, and Roof Panel Systems*: inspection of early models of these vehicles for remote activation devices that exceed the distance limitations of this standard. Systems not conforming to this standard will be disabled to achieve conformity.

Standard No. 208 *Occupant Crash Protection*: installation of airbag system components from the U.S.-model BMW E34 5-series as necessary. Installation of driver and/or passenger knee bolsters that conform to the requirements of this standard.

Standard No. 209 *Seat Belt Assemblies*: inspection of seat belt assemblies and replacement of any non-conforming components with U.S.-model BMW E34 5-series components.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Claude H. Harris,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2013–23358 Filed 9–24–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2013–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2013 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2013 RCAF (Unadjusted) is 0.975. The fourth quarter 2013 RCAF (Adjusted) is 0.423. The fourth quarter 2012 RCAF–5 is 0.399.

DATES: *Effective Date:* October 1, 2013.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: In *Railroad Cost Recovery Procedures*, 1 I.C.C. 2d 207 (1984), the Interstate Commerce Commission (ICC) outlined the procedures for calculating the all-inclusive index of railroad input prices and the method for computing the rail cost adjustment factor (RCAF). Under the procedures, the Association of American Railroads (AAR) is required to calculate the index on a quarterly basis and submit it to the agency on the fifth day of the last month of each calendar quarter. In *Railroad Cost Recovery Procedures—Productivity Adjustment*, 5 I.C.C. 2d 434 (1989), *aff’d sub nom. Edison Electric Institute v. ICC*, 969 F.2d 1221 (D.C. Cir. 1992), the ICC adopted procedures that require the adjustment of the quarterly index for a measure of productivity.

The provisions of 49 U.S.C. 10708 direct the Surface Transportation Board (Board) to continue to publish both an unadjusted RCAF and a productivity-adjusted RCAF. In *Productivity Adjustment—Implementation*, 1 S.T.B. 739 (1996), the Board decided to publish a second productivity-adjusted RCAF called the RCAF–5. Consequently, three indices are now filed with the Board: the RCAF (Unadjusted); the RCAF (Adjusted); and the RCAF–5. The RCAF (Unadjusted) is an index reflecting cost changes experienced by the railroad industry, without reference to changes in rail productivity. The RCAF (Adjusted) is an index that reflects national average productivity changes as originally developed and applied by the ICC, the calculation of which is currently based on a 5-year moving average. The RCAF–5 is an index that also reflects national average productivity changes; however, those productivity changes are calculated as if a 5-year moving average had been applied consistently from the productivity adjustment’s inception in 1989.

The index of railroad input prices, RCAF (Unadjusted), RCAF (Adjusted), and RCAF–5 for the fourth quarter of 2013 are shown in Table A of the Appendix to this decision. Table B shows the second quarter 2013 index and the RCAF calculated on both an actual and a forecasted basis. The difference between the actual calculation and the forecasted calculation is the forecast error adjustment.

The weights for each major cost component of the all-inclusive cost

index, on which the RCAF is based, are updated annually in order to reflect the changing mix of index components. See 49 U.S.C. 10708. This includes rebenchmarking the wages and supplemental rates used in the labor index in the fourth quarter of each year. The weights used by AAR are based on the distribution of railway expenses for the year 2012. Similarly, AAR has used wage and supplemental rates for the year 2012 to calculate hourly labor rates that reflect the changing mix of employees.

In a decision served July 25, 2013,¹ the Board directed BNSF Railway Company (BNSF) to refile its R-1 report for 2010, 2011, and 2012, 60 days after the decision's August 24, 2013 effective date (October 23, 2013). In July 2013, Union Pacific Railroad Company (UP) submitted to the Board its own revised R-1 Schedules 210 and 510 for the years 2010, 2011, and 2012, to correct certain errors, yet AAR notes that it used only the corrected data from 2012 to calculate the new weights and interest index herein because BNSF's data were not yet available. This is not, however, our preferred approach, which is to use all available data to generate the most accurate calculation at any given time.

While BNSF's anticipated R-1 resubmission may require further adjustments to the RCAF calculation, all known errors in the relevant data should have been addressed in the current filing. However, the Board understands that its publication of the RCAF figures in a timely fashion is important to a number of interested parties, and hence, in this instance, the Board will rely on the AAR for this calculation. While AAR states that it plans to examine the changes to all indexes once it has BNSF's revisions, AAR is directed to use all the data available to it at the time it submits its quarterly calculations. Therefore, we will direct AAR to make the adjustment for the UP 2010, 2011, and 2012 interest expense restatement, to the extent not already made, in its next quarterly submission.²

We have examined AAR's calculations, including its reweighting and rebenchmarking calculations, and we find that AAR has complied with our procedures with respect to the available data for 2012. We find that the fourth quarter 2013 RCAF (Unadjusted) is 0.975, a decrease of 0.2% from the third quarter 2013 RCAF of 0.977. The RCAF (Adjusted) is calculated, in part,

using the RCAF (Unadjusted) and a 5-year moving geometric average of productivity change for U.S. Class I railroads from 2007-2011, which is 1.009 (0.9% per year). We find the RCAF (Adjusted) is 0.423, a decrease of 0.5% from the previously reported third quarter 2013 RCAF (Adjusted) of 0.425.³

In accordance with *Productivity Adjustment—Implementation*, 1 S.T.B. at 748-49, the RCAF-5 for this quarter will use a productivity trend for the years 2006-2010, which is 1.008 (0.8% per year). We find the RCAF-5 for the fourth quarter of 2013 is 0.399, a decrease of 0.5% from the previously reported third quarter 2013 RCAF-5 of 0.401.⁴

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10708.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Decided: September 19, 2013.

Derrick A. Gardner,
Clearance Clerk.

Appendix

TABLE A—EP 290 (SUB-NO. 5) (2013-4)—ALL INCLUSIVE INDEX OF RAILROAD INPUT COSTS
[Endnotes following Table B]

Line No.	Index component	2012 Weight (percent)	Third quarter 2013 forecast	Fourth quarter 2013 forecast
1	LABOR	31.2	390.4	385.8
2	FUEL	22.4	375.6	399.6
3	MATERIALS AND SUPPLIES	4.9	264.2	261.4
4	EQUIPMENT RENTS	5.6	208.0	207.7
5	DEPRECIATION	12.1	218.9	221.0
6	INTEREST	1.9	92.9	73.5
7	OTHER ITEMS ⁱ	21.9	221.4	220.0
8	WEIGHTED AVERAGE	100.0	307.3	310.6
9	LINKED INDEX ⁱⁱ		294.3	297.5
10	PRELIMINARY RAIL COST ADJUSTMENT FACTOR ⁱⁱⁱ		98.9	100.0
11	FORECAST ERROR ADJUSTMENT ^{iv}		- 0.012	- 0.025
12	RCAF (UNADJUSTED) (LINE 10 + LINE 11)		0.977	0.975
13	RCAF (ADJUSTED)		0.425	0.423
14	RCAF-5		0.401	0.399

TABLE B—EP 290 (SUB-NO. 5) (2013-4)—COMPARISON OF SECOND QUARTER 2013 INDEX CALCULATED ON BOTH A FORECASTED AND AN ACTUAL BASIS

Line No.	Index component	2011 Weight (percent)	Second quarter 2013 forecast	Second quarter 2013 actual
1	LABOR	31.3	384.9	384.9

¹ *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506, slip op. at 2.

² Interested parties may submit a petition for reconsideration to propose alternative approaches for addressing the need to correct for restated data while awaiting further modifications.

³ The fourth quarter 2013 RCAF Adjusted (0.423) is calculated by dividing the fourth quarter 2013

RCAF Unadjusted (0.975) by the fourth quarter productivity adjustment factor of 2.3059. The fourth quarter 2013 productivity adjustment factor is calculated by multiplying the third quarter 2013 productivity adjustment of 2.3008 by the fourth root (1.0022) of the 2007-2011 annual average productivity growth rate of 0.9%.

⁴ The fourth quarter 2013 RCAF-5 (0.399) is calculated by dividing the fourth quarter 2013 RCAF Unadjusted (0.975) by the fourth quarter productivity adjustment factor-5 (PAF-5) of 2.4426. The fourth quarter 2013 PAF-5 is calculated by multiplying the third quarter 2013 PAF-5 of 2.4377 by the fourth root (1.0020) of the 2006-2010 annual average productivity growth rate of 0.8%.

TABLE B—EP 290 (SUB-NO. 5) (2013–4)—COMPARISON OF SECOND QUARTER 2013 INDEX CALCULATED ON BOTH A FORECASTED AND AN ACTUAL BASIS—Continued

Line No.	Index component	2011 Weight (percent)	Second quarter 2013 forecast	Second quarter 2013 actual
2	FUEL	22.5	404.3	373.1
3	MATERIALS AND SUPPLIES	5.1	261.0	261.0
4	EQUIPMENT RENTS	5.6	206.9	207.0
5	DEPRECIATION	11.6	219.6	218.8
6	INTEREST	2.5	92.9	92.9
7	OTHER ITEMS	21.4	220.2	219.4
8	WEIGHTED AVERAGE	100.0	311.3	304.0
9	LINKED INDEX		298.5	290.9
10	RAIL COST ADJUSTMENT FACTOR		100.3	97.8

Endnotes:

ⁱ “Other Items” is a combination of Purchased Services, Casualties and Insurance, General and Administrative, Other

Taxes, Loss and Damage, and Special Charges, price changes for all of which are measured by the Producer Price Index for Industrial Commodities Less Fuel and Related Products and Power.

ⁱⁱ Linking is necessitated by a change to the 2012 weights beginning in the fourth quarter of 2013. The following formula was used for the current quarter’s index:

$$\frac{\text{4th Qr. 2013 Index (2012 Weights)}}{\text{3rd Qr. 2013 Index (2012 Weights)}} \times \text{Times 3rd Quarter Linked Index (1980 = 100 Linked)} = \text{Equals Linked Index (Current Quarter)}$$

Or

$$\frac{310.6}{307.3} \times 294.3 = 297.5$$

ⁱⁱⁱ The first quarter 2013 RCAF was rebased using the October 1, 2012 level of 297.5 in accordance with the requirements of the Staggers Rail Act of 1980 (10/1/2012 = 100).

^{iv} The fourth quarter 2013 forecast error adjustment was calculated as follows: (a) Second quarter 2013 RCAF using forecasted data equals 100.3; (b) second quarter 2013 RCAF using actual data equals 97.8; (c) the difference equals the forecast error (b – a) of –2.5. Because the actual second quarter value is less than the forecast value, the difference is subtracted from the Preliminary RCAF.

[FR Doc. 2013–23338 Filed 9–24–13; 8:45 a.m.]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Guidance on Sound Incentive Compensation Practices**

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of an information collection titled, “Guidance on Sound Incentive Compensation Practices.” The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Written comments should be submitted by October 25, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0245, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to regs.comments@occ.treas.gov. You may

personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0245, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: oir_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities

Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting renewal, without change of the following collection:

Title: Guidance on Sound Incentive Compensation Policies.

OMB Number: 1557–0245.

Abstract: Under the guidance, national banks and Federal savings associations are required to: (i) Have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in incentive compensation arrangements, identify the source of significant risk-related inputs, establish appropriate controls governing these inputs to help ensure their integrity, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,033 large banks; 1,991 small banks.

Estimated Burden per Respondent: 520 hours for large banks; 52 hours for small banks.

Frequency of Response: Annually.

Total Annual Burden: 640,692 hours.

The OCC issued a notice for 60 days of comment on July 19, 2013 (78 FR 43276). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including

through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 19, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–23281 Filed 9–24–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Assessments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Assessment of Fees—12 CFR 8."

DATES: You should submit written comments by November 25, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0223, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may

be sent by fax to (571) 465–4326 or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You can request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the 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) to include 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, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Assessment of Fees—12 CFR 8.
OMB Control No.: 1557–0223.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, "Assessment of Fees—12 CFR 8." The OCC is authorized to

collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC by the National Bank Act (for national banks) and the Home Owners Loan Act (for Federal savings associations). The OCC requires independent credit card banks and independent credit card Federal savings associations to pay an additional assessment based on receivables attributable to accounts owned by the bank or Federal savings association. Independent credit card banks and independent credit card Federal savings associations are national banks or Federal savings associations that primarily engage in credit card operations and are not affiliated with a full service national bank or Federal savings association. The OCC will require independent credit card banks and independent credit card Federal savings associations to provide the OCC with "receivables attributable" data. "Receivables attributable" refers to the total amount of outstanding balances due on credit card accounts owned by an independent credit card bank (the receivables attributable to those accounts) on the last day of an assessment period, minus receivables retained on the bank or Federal savings association's balance sheet as of that day. The OCC will use the information to verify the accuracy of each bank and Federal savings association's assessment computation and to adjust the assessment rate for independent credit card banks and independent credit card Federal savings associations over time.

Estimated Number of Respondents: 9.

Estimated Number of Responses: 18.

Frequency of Response:

Semiannually.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 18 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 19, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013-23282 Filed 9-24-13; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two Individuals Pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of two individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designations by the Director of OFAC of the two individuals in this notice, pursuant to Executive Order 13224, are effective on September 18, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by

foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On September 18, 2013, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant

agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. ABDUL MAJID, Afif (a.k.a. ABDUL AL MAJID, Afif; a.k.a. ABDUL MADJID, Afif; a.k.a. BIN ABDUL MAJID, Afif); DOB 01 Jan 1955; POB Pacitan, East Java, Indonesia; nationality Indonesia (individual) [SDGT].
2. SUNGKAR, Said Ahmad (a.k.a. SUNGKAR, Sahid Ahmad; a.k.a. SUNGKAR, Said); DOB 25 Oct 1961; nationality Indonesia; Passport U337061 (Indonesia) issued 17 Dec 2009 expires 17 Dec 2014; National ID No. 337502.251061.0002 (Indonesia) (individual) [SDGT].

Dated: September 18, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013-23343 Filed 9-24-13; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5300 and Schedule Q (Form 5300)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5300, Application for Determination for Employee Benefit Plan, and Schedule Q (Form 5300), Elective Determination Requests.

DATES: Written comments should be received on or before November 25, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue

Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the forms and instructions should be directed to Gerald J. Shields, LL.M. at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at Gerald.J.Shields@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Employee Benefit Plan (Form 5300), and Elective Determination Requests (Schedule Q (Form 5300)).

OMB Number: 1545-0197.

Form Number: Form 5300 and Schedule Q (Form 5300).

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The information requested on Schedule Q (Form 5300) relates to the manner in which the plan satisfies certain qualification requirements concerning minimum participation, coverage, and nondiscrimination.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 185,000.

Estimated Time per Respondent: 43 hours, 6 minutes.

Estimated Total Annual Burden Hours: 7,972,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 2013.

Alan M. Hopkins,

Tax Analyst.

[FR Doc. 2013-23291 Filed 9-24-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held October 10, 2013.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held at 999 North Capitol Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth M. Vriend, C:AP:SO:ART, 1111 Constitution Ave. NW., Washington, DC 20224. Telephone (202) 317-8853 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held at 999 North Capitol Street, Washington, DC, 20002.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory

Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), of the Government in Sunshine Act and that the meeting will not be open to the public.

Kirsten B. Wielobob,
Acting Chief, Appeals.

[FR Doc. 2013-23290 Filed 9-24-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0222]

Proposed Information Collection (Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery) Activity: Withdrawal

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; withdrawal.

SUMMARY: The Department of Veterans Affairs (VA) published a notice in a **Federal Register** on September 19, 2013 (78 FR 57683), inviting the public to comment on a proposed information collection titled "Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40-1330." This document withdraws the **Federal Register** on September 19, 2013 (78 FR 57683). VA submitted this notice prematurely, will continue to develop it and will issue another notice in the near future.

DATES: This document withdraws the **Federal Register** on September 19, 2013 (78 FR 57683).

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 632-7492.

FR Doc. 2013-22770, published on September 19, 2013 (78 FR 57683) is withdrawn by this notice.

Dated: September 20, 2013.

Crystal Rennie,
VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-23352 Filed 9-24-13; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0749]

Agency Information Collection (Disability Benefits Questionnaires) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 25, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to "OMB Control No. 2900-0749" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-0749".

SUPPLEMENTARY INFORMATION:

Titles:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21-0960a-1.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21-0960b-1.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21-0960c-1.

OMB Control Number: 2900-0749.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 21-0960a-1, 21-0960b-1, and 21-0960c-1 are used to expedite claims for the following presumptive diseases based on herbicide exposure: Hairy Cell and Other Chronic B-cell Leukemias, Parkinson's and Ischemic Heart

diseases. Veterans have the option of providing the forms to their private physician for completion and submission to VA in lieu of scheduling a VA medical examination. The data collected will be used to adjudicate Veteran's claim for disability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 13, 2013, at pages 35661-35662.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21-0960a-1—13,750.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21-0960b-1—500.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21-0960c-1—1,250.

Estimated Average Burden Per Respondent: 15 minutes for each form.
Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21-0960a-1—55,000.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21-0960b-1—2,000.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21-0960c-1—5,000.

Dated: September 20, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-23295 Filed 9-24-13; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0021]

Agency Information Collection (VA Loan Electronic Reporting Interface (VALERI) System) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 25, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–0021” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to “OMB Control No. 2900–0021.”

SUPPLEMENTARY INFORMATION:

Title: VA Loan Electronic Reporting Interface (VALERI) System.

OMB Control Number: 2900–0021.

Type of Review: Revision of a currently approved collection.

Abstract: VA will use the information submitted through the VALERI system to perform supplemental servicing, determination on forbearance, foreclosure, protection of property and initiation of claim payment on loan guaranty homes.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information

unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 18, 2013, at page 36642.

Affected Public: Business or other for profit

Estimated Annual Burden: 113 hours.

Estimated Average Burden per Respondent: 1 second.

Frequency of Response: Daily.

Estimated Number of Respondents: 418.

Estimated Number of Responses: 1555.

Dated: September 19, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–23222 Filed 9–24–13; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 78

Wednesday,

No. 186

September 25, 2013

Part II

Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 718 and 725

Regulations Implementing the Byrd Amendments to the Black Lung Benefits Act: Determining Coal Miners' and Survivors' Entitlement to Benefits; Final Rule

DEPARTMENT OF LABOR**Office of Workers' Compensation Programs****20 CFR Parts 718 and 725**

RIN 1240-AA04

Regulations Implementing the Byrd Amendments to the Black Lung Benefits Act: Determining Coal Miners' and Survivors' Entitlement to Benefits

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Black Lung Benefits Act (BLBA or Act) regulations to implement amendments made by the Patient Protection and Affordable Care Act (ACA). The ACA amended the BLBA in two ways. First, it revived a rebuttable presumption of total disability or death due to pneumoconiosis for certain claims. Second, it reinstated automatic entitlement to benefits for certain eligible survivors of coal miners whose lifetime benefit claims were awarded because they were totally disabled due to pneumoconiosis. These regulations clarify how the statutory presumption may be invoked and rebutted and the application and scope of the survivor-entitlement provision. The rule also eliminates several unnecessary or obsolete provisions.

DATES: This rule is effective October 25, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Breeskin, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Suite C-3520, Washington, DC 20210. Telephone: (202) 343-5904 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-800-877-8339 for further information.

SUPPLEMENTARY INFORMATION:**I. Background of This Rulemaking**

On March 30, 2012, the Department issued a Notice of Proposed Rulemaking (NPRM) under the BLBA, 30 U.S.C. 901-944, proposing revised rules to implement amendments to the BLBA made by the ACA, Public Law 111-148, 1556, 124 Stat. 119, 260 (2010), and inviting public comment. 77 FR 19456-19478 (Mar. 30, 2012). These amendments reinstated two BLBA entitlement provisions—Section 411(c)(4), 30 U.S.C. 921(c)(4) (the “15-year presumption”) and Section 422(l), 30 U.S.C. 932(l) (survivors' automatic

entitlement provision)—that had been repealed with respect to claims filed on or after January 1, 1982. As a result of these amendments, a miner or survivor who files his or her claim after January 1, 2005 may now rely on the 15-year presumption in establishing entitlement to benefits, provided that the claim was pending on or after March 23, 2010 and the presumption's requirements for invocation are met. In addition, survivors whose claims meet the effective-date requirements are entitled to benefits if the miner was awarded disability benefits on a lifetime claim, assuming that the survivor meets the BLBA's other conditions of entitlement (such as relationship and dependency). The Department recounted the history of these provisions in the NPRM. 77 FR at 19456-58. The Department also proposed revising or ceasing publication of several related rules that are obsolete or unnecessary. The NPRM's comment period closed May 29, 2012.

II. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the Act.

III. Discussion of Significant Comments

The Department received approximately fifteen comments on the proposed regulations. Most of these comments focus on only a few substantive issues. The Department's response to the major comments is set forth below in the Section-by-Section Explanation, along with an explanation of any changes made to the proposed rules in response. Some members of the public applauded the Department for eliminating outdated or unnecessary provisions and streamlining the regulations where possible. *See generally* Executive Order 13563, 76 FR 3821 (January 18, 2011) (instructing agencies to review “rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.”). The public submitted no negative comments on the revisions proposed to §§ 718.1, 718.2, 718.3(a), 718.202(a)(3), 718.301, 718.303, 718.306, Part 718 Appendix C, 725.1, 725.2, 725.101(a)(1) and (2), 725.201, and 725.418. Accordingly, the Department is promulgating these regulations as proposed with the technical change explained below.

The Department has made an additional technical change and replaced the term “shall” throughout the regulatory sections revised by this final rule. Executive Order 13563 states

that regulations must be “accessible, consistent, written in plain language, and easy to understand.” 76 FR 3821. *See also* E.O. 12866, 58 FR 51735 (Sept. 30, 1993) (“Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.”). To that end, the Department has removed the imprecise term “shall” in those sections it is amending and substituted “must,” “must not,” “will,” or other situation-appropriate terms. *See generally* Federal Plain Language Guidelines, <http://www.plainlanguage.gov/howto/guidelines>; Black's Law Dictionary 1499 (9th ed. 2009) (“shall” can be read either as permissive or mandatory).

Some of the Department's rules as proposed in the NPRM used the term “shall.” The final version eliminates the term from these proposed subsections: §§ 718.2(c), 718.202(a)(3), 718.305(b)(1)(iii), 718.305(b)(4), 718.305(d)(3), Part 718 Appendix C, 725.1(g), 725.309(c), 725.309(c)(1), 725.418(a), 725.418(a)(3), and 725.418(d). The final rule also makes similar technical changes to the following subsections: §§ 725.2(c), 725.101(a)(4), 725.101(a)(32)(i) through (iv), 725.101(b), 725.309(a), 725.309(c)(2) through (4), 725.309(d), 725.418(b)–(c). (All references are to regulations as designated in the final rule.) Although not included in the NPRM, the Department has revised these additional subsections to eliminate the term “shall” from all subsections of each amended regulation. No change in meaning is intended.

Section-by-Section Explanation**20 CFR 718.205 Death due to pneumoconiosis**

(a) Section 718.205 sets forth the criteria for establishing that a miner's death was due to pneumoconiosis. The Department proposed revising § 718.205 to: (1) Clarify that some survivors need not prove the miner died due to pneumoconiosis to be entitled to benefits given the ACA's revival of Section 422(l); (2) expand the criteria to include the Section 411(c)(4) 15-year presumption of death due to pneumoconiosis for claims governed by the ACA amendments; and (3) eliminate outmoded provisions. 77 FR at 19459-60. In particular, the Department proposed revising the “traumatic injury” provision in § 718.205(c)(4) and redesignating it as § 718.205(b)(5). Section 718.205(c)(4) currently precludes survivor entitlement where the miner's death was caused by a

traumatic injury or a medical condition unrelated to pneumoconiosis “unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.” 20 CFR 718.205(c)(4) (2011). To implement the 15-year presumption and clarify that certain survivors could establish this required causal connection by presumption, the Department proposed revising this last clause to read “unless the claimant establishes (by proof or presumption) that pneumoconiosis was a substantially contributing cause of death.” 77 FR 19460, 19475.

(b) One comment asks the Department to adopt a blanket rule that a survivor is not entitled to benefits when the miner commits suicide. This commenter argues that suicide should never be compensable, even where the survivor establishes that the miner suffered from complicated pneumoconiosis and invokes the Section 411(c)(3) irrebuttable presumption of entitlement, 30 U.S.C. 921(c)(3). The comment states that allowing compensation in these circumstances is at odds with other Federal workers’ compensation statutes (including the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. 901–950), most state workers’ compensation systems, and public policy. The comment points to Benefits Review Board and Sixth Circuit case precedent holding that a survivor cannot recover benefits when a miner commits suicide.

Another comment strongly objects to this commenter, stating that survivors should not be deprived of benefits in those tragic cases where the miner commits suicide. This comment notes that the survivors have likely nursed the disabled miner as his physical condition deteriorated and contends that coal mine operators should bear responsibility for the pain and psychological problems pneumoconiosis causes.

The final rule treats suicide like any other traumatic event that ends a miner’s life. There is no basis in the statute or legislative history to draw a distinction for suicide. Since 1983, the regulations have explicitly recognized that pneumoconiosis might be a substantially contributing cause of a death even when the miner’s death was immediately caused by a traumatic injury. When the Department first promulgated § 718.205, the regulation contained no provision addressing traumatic injury or a principal cause of death other than pneumoconiosis. But the Department noted legislative history demonstrating Congress’ intent “that traditional workers’ compensation principles such as those, for example,

which permit a finding of eligibility where the totally disabling condition was significantly related to or aggravated by the occupational exposure be included within such regulations.” 45 FR 13678, 13690 (Feb. 29, 1980) citing S. Rep. No. 209, 95th Cong., 1st Sess. 13–14 (1977). In 1983, the Department extensively revised § 718.205 to implement the 1981 Amendments to the BLBA, which restricted survivor eligibility by eliminating automatic entitlement for claims filed after 1981 and required all survivors to prove that the miner’s death was due to pneumoconiosis. See generally 77 FR at 19456–57 (outlining statutory history). Based on the accompanying legislative history, the Department added § 718.205(c)(4) to clarify that a survivor could prove entitlement by showing that pneumoconiosis substantially contributed to the miner’s death even when the principal cause of death was a traumatic injury or a medical condition unrelated to pneumoconiosis. 48 FR 24272, 24277–78 (May 31, 1983). Once again the Department noted Congress’ desire to “make the federal statute consistent with traditional workers’ compensation principles.” 48 FR at 24278.

The majority of states allow workers’ compensation death benefits when an otherwise compensable injury caused an employee to “become dominated by a disturbance of the mind of such severity to override normal rational judgment” which resulted in the employee taking his or her own life. 2 John L. Gelman, *Modern Workers Compensation* § 115:5 (West 2013); Lex K. Larson, *Larson’s Workers Compensation Law* §§ 38.01–38.05 (Matthew Bender, Rev. Ed. 2012); see also, e.g., *Graver Tank & Mfg. Co. v. Indus. Comm’n*, 399 P.2d 664, 668 (Ariz. 1965) (“where the original work-connected injuries suffered by the employee result in his becoming devoid of normal judgment and dominated by a disturbance of mind directly caused by his injury and its consequences, such as severe pain and despair, the self-inflicted injury” may be compensable); *Advance Aluminum Co. v. Leslie*, 869 SW.2d 39, 41 (Ky. 1994) (“[A]n employee’s suicide is compensable if (1) the employee sustained an injury which itself arose in the course of and resulted from covered employment; (2) without that injury the employee would not have developed a mental disorder of such a degree as to impair the employee’s normal and rational judgment; and (3) without that mental disorder, the employee would not have committed suicide.”). Contrary to the

commenter’s assertion, this standard—often called the “chain of causation test”—has also been applied in cases arising under the Longshore and Harbor Workers’ Compensation Act, a federal workers’ compensation statute. E.g., *Kealoha v. Director, OWCP*, 713 F.3d 521, 524–25 (9th Cir. 2013) (“Given the best-reasoned modern trend of case law, we hold that a suicide or injuries from a suicide attempt are compensable under the Longshore Act when there is a direct and unbroken chain of causation between a compensable work-related injury and the suicide attempt.”). The rule is also applied in states where suicide or attempted suicide is still a criminal offense. See, e.g., *Kahle v. Plochman, Inc.*, 428 A.2d 913, 917 (N.J. 1981) (adopting the chain of causation rule); *Petty v. Associated Transp., Inc.*, 173 SE.2d 321, 329 (N.C. 1970) (same). Thus, contrary to the adverse comment, “[i]n effect, no jurisdictions recognize suicide as an intentional act that automatically breaks the chain of causation to defeat a claim for death benefits.” *Campbell v. Young Motor Co.*, 684 P.2d 1101, 1102 (Mont. 1984).

The commenter primarily relies on the Sixth Circuit’s decision in *Johnson v. Peabody Coal Co.*, 26 F.3d 618 (6th Cir. 1994), to support the view that a miner’s suicide should always bar his survivors’ entitlement. *Johnson* considered § 718.205(c)(4) in the suicide context. The court found the Act’s legislative history to be silent on whether psychological injury may establish the causal link between pneumoconiosis and death. In part because the then-applicable 1981 Amendments “were designed to limit, not expand benefits,” 26 F.3d at 620, the court concluded that benefits should not be paid to the survivors of a miner who commits suicide. But that important reasoning is no longer valid because the ACA amendments repealed many of the restrictions on benefits that were instituted by the 1981 Amendments and considered by the *Johnson* court. Accordingly, the Department does not view the *Johnson* decision as dispositive. Instead, compensating a miner’s survivors where the miner’s suicide is causally linked to pneumoconiosis is consistent with workers’ compensation principles and underlying Congressional intent.

The final rule also clarifies the Department’s longstanding view that suicide does not preclude entitlement once the survivor invokes the Section 411(c)(3) irrebuttable presumption of entitlement by establishing that the miner suffered from complicated pneumoconiosis. This result is

compelled by the presumption's plain language. The provision is simply written: "If a miner is suffering or suffered from a chronic dust disease of the lung [that is described by the statutory criteria for complicated pneumoconiosis], then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis[,] as the case may be." 30 U.S.C. 921(c)(3). The language of the presumption itself renders the cause of the miner's death—even a death by suicide—irrelevant to the entitlement inquiry. "[T]he presumption operates conclusively to establish entitlement to benefits." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 11 (1976). The Supreme Court explained in upholding Section 411(c)(3) against constitutional challenge that the presumption's effect "is to grant benefits to the survivors of any miner who during his lifetime had complicated pneumoconiosis arising out of employment in the mines, regardless of whether the miner's death was caused by pneumoconiosis." *Id.* at 24 (emphasis added). Although the Court acknowledged that an unrelated death "can hardly be termed a 'cost' of the operator's business," it still concluded that the "clear" intent of the presumption was not to provide benefits "simply as compensation for damages due to the miner's Death, but as deferred compensation for injury suffered during the miner's lifetime as a result of his illness itself." *Id.* at 25. See also *Gray v. SLC Coal Co.*, 176 F.3d 382, 386–87 (6th Cir. 1999) (agreeing with Department's view that § 718.205(c)(4) traumatic injury provision does not preclude survivor of miner who committed suicide from pursuing benefits under Section 411(c)(3) presumption); *USX Corp. v. Director, OWCP*, 19 F.3d 1431 (4th Cir. 1994) (unpublished table decision) (citing *Usery* and affirming survivor's benefits award under Section 411(c)(3), notwithstanding § 718.205(c)(4), where miner's death was caused by a non-work-related tractor accident).

In sum, the final rule allows the survivors of a miner who committed suicide to prove death due to pneumoconiosis by demonstrating either that the suicide was causally linked to pneumoconiosis or by invoking the Section 411(c)(3) irrebuttable presumption of entitlement. The Department believes these changes will have little practical impact on claim adjudications given the ACA's revitalization of automatic survivors'

entitlement, which also makes the cause of a miner's death irrelevant if the miner was entitled to lifetime benefits. If the miner's claim was not awarded, the Department anticipates that his survivors will be able to demonstrate a link between disease and suicide only in rare cases.

(c) No further comments on this section were received and the Department has promulgated the remainder of the regulation as proposed.

20 CFR 718.305 Presumption of pneumoconiosis

(a) Section 718.305 implements the Section 411(c)(4) 15-year presumption. This statutory section provides a rebuttable presumption of total disability or death due to pneumoconiosis if the miner "was employed for fifteen years or more in one or more underground coal mines" or in a coal mine other than an underground mine in conditions "substantially similar to conditions in an underground mine" and suffers or suffered from "a totally disabling respiratory or pulmonary impairment." 30 U.S.C. 921(c)(4). Because current § 718.305 describes the presumption's requirements using language largely taken verbatim from the statute and offers little additional guidance regarding how the presumption may be invoked or rebutted, the Department proposed substantial revisions to clarify the presumption's operation. The proposed rule also eliminated obsolete provisions.

(b) *Invocation*. Three comments object to proposed § 718.305(b)(2), which states that "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the miner was exposed to coal-mine dust while working there." 77 FR at 19475. The Department explained in the preamble that under this standard, a claimant would not need to produce evidence about underground mining conditions and that it was incumbent upon the fact finder to compare the claimant's non-underground mining exposure with those conditions known to exist in underground mines. 77 FR at 19461. The Department cited several circuit court cases, including *Director, OWCP v. Midland Coal Co.*, 855 F.2d 509, 512 (7th Cir. 1988), and Benefits Review Board cases which had adopted this approach.

The commenters that object to this section point out that although the preamble states that the fact finder must compare the miner's non-underground mine exposure with underground mine conditions, the regulation itself only

requires that a claimant demonstrate some coal-mine-dust exposure in non-underground mining. They contend this is contrary to the statute's plain language because it does not require the claimant to prove any type of similarity between exposures in underground and non-underground work. The comments also state that the Department should adopt an objective standard for proving substantial similarity (although no comment suggests a particular standard) and that the test should take into consideration certain studies showing that non-underground miners rarely develop disabling pneumoconiosis. One comment notes that administrative law judges do not necessarily have the requisite expertise to compare an individual non-underground miner's exposure to usual conditions in underground mining. Another comment suggests that OWCP confer with the Mine Safety and Health Administration and the National Institutes of Health to develop a standard.

Two comments support proposed § 718.305(b)(2) and the adoption of the *Midland Coal* standard. One states that it is a common sense rule that administrative law judges have had no problem applying. The commenters argue that any rule that requires a claimant to quantify a miner's dust exposure would be impractical. The commenters also note that the potential exposure in non-underground mining is actually greater than in underground mining because no ventilation systems mitigate the exposure. These comments also disagree with the other commenters' representations that certain medical studies demonstrate non-underground miners are not at increased risk for pneumoconiosis, especially once silicosis is taken into account.

The Department has revised § 718.305(b)(2) to clarify the standard. The Department agrees with those comments that noted the proposed rule could be interpreted as allowing a "substantial similarity" finding when the miner was exposed to any coal-mine dust in non-underground coal mining. This would not satisfy the statutory standard and was not the Department's intent.

The final rule's revised language clarifies the Department's intent about how the substantial similarity analysis should be conducted. The final rule acknowledges, as the Seventh Circuit recognized in *Midland Coal*, a fundamental premise underlying the BLBA, as demonstrated by the legislative history, *i.e.*, that "underground mines are dusty." *Midland Coal*, 855 F.2d at 512. Given

that legislative fact, it is unnecessary for a claimant to prove anything about dust conditions existing at an underground mine for purposes of invoking the 15-year presumption. Instead, the claimant need only focus on developing evidence addressing the dust conditions prevailing at the non-underground mine or mines at which the miner worked. The objective of this evidence is to show that the miner's duties regularly exposed him to coal mine dust, and thus that the miner's work conditions approximated those at an underground mine. The term "regularly" has been added to clarify that a demonstration of sporadic or incidental exposure is not sufficient to meet the claimant's burden. The fact-finder simply evaluates the evidence presented, and determines whether it credibly establishes that the miner's non-underground mine working conditions regularly exposed him to coal mine dust. If that fact is established to the fact-finder's satisfaction, the claimant has met his burden of showing substantial similarity. And if the periods of regular exposure in non-underground mine employment (combined with any underground mine employment) total 15 years or more, the claimant will be entitled to invoke the presumption if a total respiratory or pulmonary disability is also established. This procedure will also alleviate one commenter's concern that some administrative law judges may not be knowledgeable about conditions in underground mines.

To the extent the comments urge the Department to adopt technical comparability criteria, such as requiring a claimant to produce scientific evidence specifically quantifying the miner's exposure to coal mine dust during non-underground mining, the Department rejects the suggestion. Benefit claimants, who must bear the burden of proving substantial similarity to invoke the presumption, generally do not control this type of technical information about the mines in which the miner worked. *See generally Usery*, 428 U.S. at 29 (noting that "showing of the degree of dust concentration to which a miner was exposed [is] a historical fact difficult for the miner to prove."). Instead, the coal mine operators control dust-sampling and similar information about their mines. While this information is publicly available from the Mine Safety and Health Administration for some mines, it may not be relevant or available in any particular case. Dust sampling in non-underground mines is done on a designated-position basis (*e.g.*, bulldozer operator, driller). *See generally* 30 CFR 71.201 *et seq.* Thus,

the results may not be relevant to miners doing other jobs and certainly would not be an adequate basis for the Department to adopt an exposure rule for all non-underground miners.

Instead, the Department believes the standard should be one that may be satisfied by lay evidence addressing the individual miner's experiences. Congress enacted the Section 411(c)(4) presumption to assist miners and their survivors in establishing entitlement to benefits, and also permitted certain claimants to prove entitlement by lay evidence. 30 U.S.C. 923(b). Putting insurmountable hurdles in claimants' paths does not comport with that intent. Moreover, because a claimant's dust exposure evidence will be inherently anecdotal, it would serve no purpose for the Department to develop an objective, and therefore dissimilar, benchmark of underground mine conditions for comparison purposes. The legislative fact that underground coal mines are dusty is fully sufficient for this purpose. Of course, nothing would preclude a coal mine operator from introducing evidence—including any technical data within its control—showing that the particular miner was not regularly exposed to coal mine dust during his non-underground coal mine employment.

The Department also does not believe that reviewing current medical and scientific literature on the prevalence of pneumoconiosis in non-underground miners would be useful in promulgating this particular rule. By explicitly making the presumption available to at least some non-underground miners, Section 411(c)(4) finds as a legislative fact that these miners can develop pneumoconiosis. Moreover, the statute focuses the substantial similarity question on a comparison of conditions existing at the different types of mines, not on the medical question of whether certain exposures do or do not lead to pneumoconiosis. *See Midland Coal*, 855 F.2d at 512 ("Congress focused specifically on dust conditions in enacting the 'substantial similarity' provision.") The Department is not free to depart from Congress' express intent on this issue. If the particular miner did not, in fact, suffer from pneumoconiosis, the coal mine operator will be able to rebut the presumption.

(c) *Rebuttal.* The Department proposed § 718.305(d) to set out the burden of proof on the party opposing entitlement to rebut the presumption in both miners' and survivors' claims. The proposed rebuttal standards were modeled on language contained in both the statutory presumption itself and current § 718.305(d), which were used

in claims filed before January 1, 1982. Applying the statutory limitations imposed on rebuttal, proposed § 718.305(d) provided that the party opposing entitlement could rebut the presumption in only two ways: Showing that the miner did not have pneumoconiosis or that his disability or death did not arise out of coal-mine-dust exposure. For this second method, proposed § 718.305(d)(1)(ii) (for miners' claims) and § 718.305(d)(2)(ii) (for survivors' claims) provided that the presumption could be rebutted by proof that the miner's respiratory disability or death "did not arise in whole or in part out of dust exposure in the miner's coal mine employment." 77 FR at 19475. The Department explained in the preamble that this language had been interpreted by the courts, in both Section 411(c)(4) and the similar 20 CFR 727.203(b)(3) context, as requiring the party opposing entitlement to "rule out" coal mine employment as a cause of the miner's disabling respiratory or pulmonary impairment. 77 FR at 19463.

One commenter argues that the limitations on rebuttal set forth in Section 411(c)(4) do not apply to coal mine operators under the *Usery* decision. Several comments acknowledge that the "in whole or in part" standard in the proposed rule is the equivalent of the "rule-out" standard mentioned in the preamble, but express disagreement with the rule-out standard. They note that claimants who attempt to establish entitlement without benefit of the presumption must show that pneumoconiosis was a "substantially contributing cause" of disability or death, and cannot recover if pneumoconiosis was only an insignificant or "de minimis" cause of disability or death under current § 718.204(c)(1) and § 718.205(c)(2). They also contend that a "rule-out" requirement improperly imposes a different standard on operators because it requires them to establish that pneumoconiosis was not even an insignificant or de minimis cause of disability or death. One comment argues that by including the "rule-out" standard in the preamble (rather than the regulatory text), the Department has violated its duty to publish its rules for public comment. This comment contends that if the "rule-out" standard is intended to establish a party's burden of proof on rebuttal, it violates the Administrative Procedure Act (APA) as construed by the Supreme Court in *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). This comment also states that if the "rule-out" standard is intended to define the legal criteria for

rebuttal, it has no authoritative source and is inconsistent with the “reasonable medical certainty” standard it asserts applies in BLBA claim adjudications.

Two comments generally support the proposed rule. One states that the presumption should be strong and remarks that ensuring operators’ liability for coal-mine related lung disease creates an incentive for operators to comply with dust-control standards.

The final rule adopts an approach similar to the proposed rule. But the Department has made several revisions to clarify the rebuttal provisions and to accommodate some of the concerns expressed in the comments. We explain those changes below.

Miners’ claims. A miner seeking BLBA benefits is required to establish, with direct evidence or via presumption, four elements of entitlement: (1) Disease: that the miner suffers from pneumoconiosis in clinical or legal form, or both; (2) disease causation: that the pneumoconiosis arose at least in part out of coal mine employment; (3) disability: that the miner has a pulmonary or respiratory impairment that prevents the performance of the miner’s usual coal mine work; and (4) disability causation: that the miner’s pneumoconiosis contributes to that disability. 20 CFR 725.202(d)(2); *see, e.g., Morrison v. Tenn. Consol Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 170 (4th Cir. 1997). If a miner proves the disability element by a preponderance of the evidence, then Section 411(c)(4) presumes the remaining three entitlement elements. But because the presumption is rebuttable, the party opposing entitlement must be given an opportunity to show by a preponderance of the evidence that the three presumed elements (disease, disease causation, and disability causation) are not in fact present. If the opposing party establishes that the miner does not have a lung disease related to coal mine employment (elements one and two) or that the miner’s totally disabling respiratory or pulmonary impairment is unrelated to his pneumoconiosis (element four), the presumption is rebutted.

The Department has revised § 718.305(d) in this final rule to more clearly reflect that all three of the presumed elements may be rebutted. Section 718.305(d)(1)(i) provides that the party opposing entitlement may rebut the presumption by proving that the miner has neither legal nor clinical pneumoconiosis, including where the miner’s clinical pneumoconiosis did not

arise from covered coal mine employment (disease and disease causation). *See Barber v. Director, OWCP*, 43 F.3d 899, 901 (4th Cir. 1995) (party rebutting Section 411(c)(4) presumption must demonstrate absence of both clinical and legal pneumoconiosis); 77 FR at 19462–63 (same). Section 718.305(d)(1)(ii) provides that rebuttal may also be accomplished when the party opposing the claim shows that no part of the miner’s respiratory disability was caused by pneumoconiosis (disability causation). *See generally Mingo Logan Coal Co. v. Owens*, ___ F.3d ___, 2013 WL 3929081, *4 (4th Cir. 2013) (outlining three elements available for rebuttal under Section 411(c)(4)).

These revisions also should relieve the concern expressed in the comments that the limitations Section 411(c)(4) places on rebuttal are not applicable to coal mine operators. Enacted in 1972, Section 411(c)(4) provides that “[t]he Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.” In 1976, the Supreme Court held that “the § 411(c)(4) limitation on rebuttal evidence is inapplicable to operators.” *Usery*, 428 U.S. at 35. Nevertheless, when the Department adopted § 718.305 in 1980, it listed the same two exclusive methods of rebuttal, but did not limit their application to the Secretary. The explanation for the change is simple. The 1978 amendments to the BLBA expanded the definition of “pneumoconiosis” to include what is now known as “legal pneumoconiosis,” *i.e.*, any “chronic lung disease or impairment . . . arising out of coal mine employment.” 20 CFR 718.201(a)(2). This amendment rendered proof that a miner’s disability resulted from a lung disease caused by coal dust exposure that was not pneumoconiosis no longer a valid method of rebuttal because every disabling lung disease caused by coal dust exposure is legal pneumoconiosis. Thus, the scenario motivating *Usery*’s discussion of the rebuttal-limiting sentence no longer exists: The only ways that any liable party—whether a mine operator or the government—can rebut the 15-year presumption are the two set forth in the presumption, which encompass the disease, disease-causation, and disability-causation entitlement elements. Authorities post-dating this amendment that state the coal mine operator is limited to the

statutory rebuttal methods simply reflect that fact. *See, e.g., Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939 (4th Cir. 1980).

The Department does not believe that the comment’s discussion of Supreme Court decisions limiting an agency’s power to re-interpret statutes that have been construed by the Court as unambiguous compels the Department to limit the proposed rebuttal standards to the Secretary. *See Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005), *United States v. Home Concrete & Supply, Inc.*, ___ U.S. ___, 132 S. Ct. 1836 (2012). These cases are beside the point: Neither forbid an agency from adopting a regulation that conflicts with a prior judicial decision when the new regulation is compelled by a subsequent amendment to the statute. Moreover, as already discussed, there simply are no other facts presumed under the § 411(c)(4) presumption that a coal mine operator could rebut. Thus, the Department believes that applying the § 718.305(d) rebuttal standards to all parties opposing entitlement, as proposed, will prove more helpful to the regulated public by informing it of the ways it can rebut the presumption.

The Department is also not persuaded by those comments that advocate applying the “substantially contributing cause” standard for disability causation set forth at § 718.204(c)(1) to the § 718.305(d) rebuttal standard. The comments correctly state that the proposed rules apply a different disability-causation standard to claims governed by the general Part 718 criteria than those in which the miner successfully invokes the Section 411(c)(4) presumption. But that difference is warranted by the statutory section’s underlying intent and purpose. Based on evidence that miners who worked for at least fifteen years were more likely to develop pneumoconiosis, Congress chose to extend the presumption only to those miners who worked in the mines for at least fifteen years and who were totally disabled by respiratory or pulmonary impairments. *See generally* S. Rep. No. 92–743 at 13 (1972), reprinted in 1972 U.S.C.C.A.N. 2305, 2316–17. Congress adopted the presumption to “[r]elax the often insurmountable burden of proving eligibility” these miners faced. S. Rep. No. 92–743 at 1. In short, Congress effectively singled out these miners for special treatment. Adopting a rigorous rebuttal standard in those limited circumstances in which the opposing party cannot demonstrate the absence of coal-mine-related pneumoconiosis (and thus can only rebut by showing that the

miner's disability is not related to pneumoconiosis) is consistent with Congress' approach. See generally *Consolidation Coal Co. v. Director, OWCP*, 721 F.3d 789, 795 (7th Cir. 2013) (noting "[i]t is no secret that the 15-year presumption is difficult to rebut").

The Department has consistently interpreted Section 411(c)(4) as requiring the rebutting party to show that the miner's disability did not arise "in whole or in part" from coal mining. See 20 CFR 718.305(d) (2012). And the courts considering the rebuttal provisions have concurred with the Department's use of the "in whole or in part" standard. See, e.g., *Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1320 (7th Cir. 1995); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1481 (10th Cir. 1989); *Rose*, 614 F.2d at 939; *Colley & Colley Coal Co. v. Breeding*, 59 Fed. Appx. 563, 567 (4th Cir. Mar. 11, 2003) (unpub.). The "in no part" standard the Department has adopted in the final rule is a reasonable interpretation of the statutory language and effectuates Section 411(c)(4)'s purposes. It is intended to simplify and clarify the "in whole or in part standard."

Contrary to one commenter's suggestion, the § 718.305(d) rebuttal standards adopted by the final rule do not violate the burden of proof imposed by the APA. As interpreted by the Supreme Court, the APA requires the proponent of a rule or order to bear the burden of persuasion by a preponderance of the evidence to prevail. *Greenwich Collieries*, 512 U.S. at 277–78. The "in no part" standard does not run afoul of this holding because it is the fact that must be established and not the "degree of certainty needed to find a fact or element under the preponderance standard." *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 129 (1997). As the Supreme Court has explained, "the preponderance standard goes to how convincing the evidence in favor of a fact must be in comparison with the evidence against it before that fact may be found, but does not determine what facts must be proven as a substantive part of a claim or defense." *Id.* (citing *Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 736 (3d Cir. 1993)). The "in no part" standard also does not govern the level of certainty with which a medical opinion must be expressed to be considered probative evidence; the rule provides only what facts must be established to rebut the presumption. Thus, the commenter's fears that the standard requires a higher level of certainty in medical opinions than is currently required are unfounded. Moreover, contrary to the commenter's

statement, a medical opinion need not be expressed with "reasonable medical certainty" to be probative of a medical fact under the BLBA. Instead, it is sufficient if the opinion is documented and constitutes a reasoned medical judgment. See, e.g., *Mancia v. Director, OWCP*, 130 F.3d 579, 588 (3d Cir. 1997). Thus, a party opposing entitlement may rebut the presumption when the preponderance of the evidence, including medical opinions that are documented and reasoned exercises of physicians' medical judgment, demonstrates that pneumoconiosis played no role in the miner's respiratory disability.

Survivors' claims. In the survivor's context, a claimant who establishes the invocation criteria receives a presumption that the miner died due to pneumoconiosis. This presumption encompasses the two entitlement elements in survivors' claims: Disease (that the miner had clinical and legal pneumoconiosis) and death (that the miner died due to pneumoconiosis). For the reasons stated above regarding rebuttal in a miner's claim, the Department has made parallel changes to § 718.305(d)(2) in this final rule to clarify how the presumption may be rebutted when the party opposing entitlement seeks to disprove these presumed facts.

(d) No further comments were received and the Department has promulgated the remainder of the regulation as proposed.

20 CFR 725.212, 725.218, 725.222 Conditions of entitlement

(a) This series of rules prescribes the conditions required for a miner's survivors to establish entitlement to benefits. Section 725.212 applies to a miner's surviving spouse or a surviving divorced spouse, § 725.218 applies to a deceased miner's children, and § 725.222 applies to surviving parents and siblings. The Department proposed revising these regulations to omit certain conditions of entitlement applicable only to claims filed prior to June 30, 1982, and to add new conditions of entitlement made applicable to certain claims by the ACA amendments. Specifically, ACA Section 1556(b) amended Section 422(l) to revive automatic entitlement for survivors of miners awarded lifetime disability benefits and whose claims meet the effective date requirements of ACA Section 1556(c). Proposed §§ 725.212(a)(3)(ii), 725.218(a)(2), and 725.222(a)(5)(ii) implement this amendment by clarifying that qualifying survivors who file a claim for survivors' benefits after January 1, 2005, that is

pending on or after March 23, 2010, are not required to establish that the miner died due to pneumoconiosis. 77 FR at 19467; 19477–78.

(b) Two commenters, who submitted identical comments, object generally to the Department's construction of the statute. They argue that the ACA restores derivative benefits to survivors only if the related miner's disability claim was filed after January 1, 2005, and pending on or after March 23, 2010. One commenter generally supports the Department's proposal to implement the ACA amendment restoring derivative survivors' benefits.

The Department continues to believe, as explained in the proposal (77 FR at 19467–68), that the ACA amendments apply to all claims, including survivors' claims, meeting the effective date criteria. The plain language of Section 1556(c) states that the amendments apply to "claims filed . . . after January 1, 2005, that are pending on or after [March 23, 2010]." Public Law 111–148, 1556(c), 124 Stat. 119, 260(c) (2010). Nothing in the text of ACA Section 1556(c) or Section 1556(b) suggests that the amendment only applies to disability claims by miners and not to survivors' claims. To the contrary, the most natural reading of the unqualified word "claims" in Section 1556(c) encompasses both miners' and survivors' claims. The four courts that have considered the issue have unanimously agreed with this reading and held that the amendment restoring derivative benefits applies to survivors' claims that satisfy Section 1556(c)'s effective-date requirements even if the related miner's disability claim did not. See *Marmon Coal Co. v. Director, OWCP [Eckman]*, ___ F.3d ___, ___ n.3, 2013 WL 4017160, *6 n.3 (3d Cir. 2013) ("the ACA revives § 932(l)'s automatic benefits to the extent that a survivor files a claim for benefits after January 1, 2005, that is pending on or after the ACA's effective date, March 23, 2010."); *U.S. Steel Mining v. Director, OWCP [Starks]*, 719 F.3d 1275, 1285 (11th Cir. 2013) ("Section 1556(c) does not distinguish between miners' claims and survivors' claims. The plain meaning of § 1556(c) is that anyone—miner or survivor—who filed a claim for benefits after January 1, 2005, that remained pending on March 23, 2010, can receive the benefit of the amendments."); *Vision Processing, LLC v. Groves*, 705 F.3d 551, 555 (6th Cir. 2013) ("Language and context show that the 2010 amendments apply to all survivor-benefit and all miner-benefit claims filed after January 1, 2005, and pending on March 23, 2010."); *West Virginia CWP Fund v. Stacy*, 671 F.3d 378, 388 (4th Cir. 2011)

("Because Congress used the term 'claims' [in ACA Section 1556(c)] without any qualifying language, and because both miners and their survivors may file claims under the BLBA . . . the plain language supports the Director's position that amended § 932(l) applies to survivors' claims that comply with Section 1556(c)'s effective date requirements.").

The Department's conclusion is further informed by Section 1556(c)'s impact on non-survivor claims. Section 1556(c)'s effective-date requirements apply not just to claims subject to revived Section 422(l) (Section 1556(b)), but also to claims subject to the revived Section 411(c)(4) 15-year presumption (Section 1556(a)). The 15-year presumption explicitly applies to claims brought by both miners and survivors. See 30 U.S.C. 921(c)(4). The commenters' proposed statutory construction would create an inappropriate dichotomy: the term "claims" in subsection (c) would mean "miners' and survivors' claims" when considering entitlement to the fifteen-year presumption under subsection (a), but only "miners' claims" when considering entitlement to derivative benefits under subsection (b). This incongruous result violates the "basic canon of statutory construction that identical terms within an Act bear the same meaning." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992). Indeed, the Fourth Circuit has rejected this construction as "tortured." *Stacy*, 671 F.3d at 389.

To further support their position, the commenters note that because Section 422(l) ostensibly relieves survivors of the obligation to file claims, it is illogical to use the survivor's claim filing date as the operative date for determining eligibility under Section 422(l). The context in which Congress adopted the ACA amendments leads to a different conclusion. At the time Section 1556 was enacted, both miners and survivors filed claims. Indeed, except for the survivors of miners who had filed successful claims before 1982, the only way a survivor could obtain benefits was to file an independent claim, even if the miner had been awarded lifetime disability benefits. See, e.g., *Hill v. Peabody Coal Co.*, 94 Fed. Appx. 298, 299 (6th Cir. 2004) (unpub.). Thus, Congress knew when it restored derivative benefits in 2010 that independent survivors' claims were common. See generally *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 554 (1995) (Congress is presumed to know the law, and to know how it has been interpreted.). Interpreted in that light, the term

"claim" includes both miners' and survivors' claims. See *Starks*, 719 F.3d at 1285 ("Just because the application of the amended § 932(l) to a claim operates to eliminate the need for that claim does not render its application illogical or unworkable."); *Stacy*, 671 F.3d at 388–89 ("Although amended § 932(l) states that a survivor is not required to file a new claim for benefits, the conclusion petitioner draws from this language—that the operative date for determining eligibility cannot be the date the survivor's claim was filed—simply does not follow."); *Groves*, 705 F.3d at 556 ("Section 1556(b) eliminates the requirement that survivors file a claim before obtaining benefits; it does not prohibit such claims."). See also *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 244 n.12 (3d Cir. 2011) ("[S]urely a widow seeking benefits must file something in order to receive them. After all, notwithstanding section 1556 a claimant might not be the miner's real widow. But what a widow does not have to do is establish that the miner died from pneumoconiosis.").

The commenters also state that the proposed rule is inconsistent with how the Department interpreted the 1982 amendment to Section 422(l) eliminating derivative benefits in claims filed after 1981. The Department then permitted derivative benefits in survivors' claims filed after 1981 so long as the related miner's disability claim was filed before 1982 and resulted in an award. The commenters cite *Pothering v. Parkson Coal Co.*, 861 F.2d 1321 (3d Cir. 1988), to support their view. *Pothering*, which interpreted the text of the 1981 amendment, has no bearing on the meaning of Section 1556(c), which uses entirely different language. The Department's interpretation of the 1981 amendment's use of the term "claim" as meaning only miners' claims was compelled by its particular text and legislative history, which are inapplicable to Section 1556. As noted above, the Third Circuit itself has confirmed that the ACA's automatic entitlement provisions apply to survivors' claims filed within Section 1556's temporal limitations. *Eckman*, ___ F.3d at ___ n.3, 2013 WL 4017160, *6 n.3. Other courts confronted with the *Pothering* argument have either specifically or implicitly rejected it. See *Starks*, 719 F.3d at 1286 (rejecting *Pothering* argument and noting that "[i]f [the Section 1556] context does not demand a variation in the meaning of the word 'claim,' we do not know what context would. Any other reading of the word in this context is . . . tortured.") (internal quotation marks omitted);

Stacy, 671 F.3d at 388–89; *Groves*, 705 F.3d at 555–56.

(c) No other comments were received concerning these sections, and the Department has promulgated these regulations as proposed.

20 CFR 725.309 Additional claims; effect of a prior denial of benefits

(a) Section 725.309 addresses both the filing of additional claims for benefits and the effect of a prior denial. In its notice of proposed rulemaking, the Department proposed to revise the current rule to clarify how the ACA amendment restoring Section 422(l) derivative-survivors' benefits applies when a survivor files a subsequent claim. 77 FR at 19467–68; 19478. The proposed rule added a new paragraph, § 725.309(d)(1), to clarify that a survivor need not establish a change in a condition of entitlement if the subsequent claim meets the requirements for entitlement under amended Section 422(l). The proposed rule also limited this exception to survivors whose prior claims were finally denied prior to March 23, 2010, *i.e.*, before the ACA was enacted. Once a survivor files a claim subject to the ACA and that claim is denied, any subsequent claim the survivor files is subject to the usual rules of claim preclusion set forth in proposed § 725.309(c) because the subsequent claim asserts the same cause of action as the prior denied claim.

(b) The Department received five comments asking it to abandon the proposed rule. These commenters list several related reasons for their request. They assert that "re-opening" denied survivors' claims violates the doctrine of *res judicata*, and that the ACA amendments do not create a new cause of action that would justify an exception to the doctrine or otherwise allow for re-opening of previously denied survivor claims. The commenters also suggest that the proposed rule violates ACA Section 1556(c), which restricts application of the amendments to claims filed after January 1, 2005. Finally, one commenter stated that the proposed rule does not clearly convey the Department's intent.

Two comments support the proposed rule. One contends that the Department's decision to allow survivors to file subsequent claims is both compelled by the statute's remedial purposes and consistent with *res judicata* concepts.

Although the Department declines to abandon the proposed rule, the final rule has been revised to more clearly convey the Department's intent. Specifically, the final rule

comprehensively describes the universe of survivors who are exempt from having to prove a change in a condition of entitlement under § 725.309(d) to pursue a subsequent claim. The proposed rule inadvertently excluded survivors whose prior claims were filed on or before January 1, 2005 that remained pending after the ACA's March 23, 2010 enactment date. As explained in the NPRM, 77 FR at 19468, and discussed in detail below, the ACA's revival of Section 422(l)'s automatic survivor entitlement provision created a new cause of action. Thus, these survivors may take advantage of the amendment by filing a subsequent claim without being hindered by the findings made in the prior claim. Accordingly, the Department has modified § 725.309(c)(1) by adding two subparagraphs (§§ 725.309(c)(1)(i)–(ii)) to provide explicit filing and pendency date requirements for the prior claim that cover all survivor claims not previously adjudicated under amended Section 422(l). With this change, the final rule also makes clear that only a survivor whose prior claim was not subject to the Section 422(l) amendment may be found entitled to benefits on a subsequent claim without having to establish a change in a condition of entitlement.

The Department is not persuaded by the comments that argue against allowing subsequent survivors' claims in these circumstances. The commenters' underlying assumption—that the Department's proposed rule reopens previously denied claims—misperceives the rule. As the Department emphasized in its proposal, 77 FR at 19468, the ACA does not authorize reopening of previously denied claims and the proposed rule was not intended to reopen denied survivors' claims. See generally *Eckman*, ___ F.3d at ___, 2013 WL 4017160, *5 (a subsequent claim is a “new assertion[] of entitlement” that does not re-open a prior denied claim or “disregard principles of finality and res judicata”); *Union Carbide Corp. v. Richards*, 721 F.3d 307, 314 (4th Cir. 2013) (“[R]es judicata is not implicated by [subsequent survivors'] claims since entitlement under Section 932(l), as revived by Section 1556, does not require relitigation of the prior findings that the miners' deaths were not due to pneumoconiosis.”). Instead, consistent with the plain language of the ACA, the rule is intended to make automatic entitlement available in subsequent claims, which are entirely new assertions of entitlement distinct from any previous claim. See *Lovilia Coal Co.*

v. Harvey, 109 F.3d 445, 449 (8th Cir. 1997) (a “claim” under the BLBA refers to a distinct application for benefits, not an operator's general liability to a particular claimant).

Importantly, the rule leaves the survivor's prior claim decision, and its underlying findings, in effect. This means that the survivor will not be entitled to benefits for any period of time pre-dating the prior denial. See 77 FR at 19468. Consequently, the rule is consistent with the Department's longstanding recognition that, for purposes of a subsequent claim, “the correctness of [the prior decision's] legal conclusion” must be accepted in adjudicating the latter application. *Lisa Lee Mines v. Director, OWCP*, 86 F.3d 1358, 1361 (4th Cir. 1996) (*en banc*); see also *Richards*, 721 F.3d at 317 & n.5 (limiting benefits period on subsequent survivor's claim to period after prior claim denial provides claimant “meaningful benefits” while also “mitigat[ing] the burden to the operator and respect[ing] the validity of the earlier denial.”).

The commenters are also incorrect that the doctrine of res judicata precludes application of section 422(l) to a survivor's subsequent claim. Res judicata “bars a party from suing on a claim that has already been ‘litigated to a final judgment by that party . . . and precludes the assertion by such parties of any legal theory, cause of action, or defense which could have been asserted in that action.’” *Ohio Valley Envtl. Coal. v. Arcoma Coal Co. (OVEC)*, 556 F.3d 177, 210 (4th Cir. 2009) (quoting 18 James Wm. Moore et al., Moore's Federal Practice § 131.10(1)(a) (3d ed. 2008). For res judicata to bar a subsequent action, “three elements must be present: (1) A judgment on the merits in a prior suit resolving (2) claims by the same parties . . . , and (3) a subsequent suit based on the same cause of action.” *OVEC*, 556 F.3d at 210 (internal quotation marks omitted). Res judicata is not applicable in this situation because a subsequent claim for automatic entitlement, arising by virtue of the ACA's 2010 amendment of the BLBA, is not the same cause of action as the original claim. *Eckman*, ___ F.3d at ___, 2013 WL 4017160, *6 (holding that a survivor's “subsequent claim thus involves a different cause of action, and res judicata does not prevent [the survivor] from receiving survivors' benefits under the BLBA.”).

The Department does not disagree with the notion, as expressed by one commenter, that causes of action are generally defined by a “transactional” approach. Citing various legal precedents, the commenter states that a

cause of action arises out of a common nucleus of facts and does not depend on a particular theory of recovery. It is undoubtedly correct that “[a] claim [that] existed at the time of the first suit and ‘might have been offered’ in the same cause of action, . . . is barred by res judicata.” *Aliff v. Joy Mfg. Co.*, 914 F.2d 39, 43–44 (4th Cir. 1990). But a claim that did not exist at the time of the prior proceeding, because the new claim could not have been raised in the prior proceeding, is not so barred. *Richards*, 721 F.3d at 314–15; *OVEC*, 556 F.3d at 210–11. The Supreme Court explained this principle: “[w]hile [a prior] judgment precludes recovery on claims arising prior to its entry, it cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case.” *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 328 (1955).

Contrary to the commenter's contention, it is well-recognized that a statutory amendment subsequent to a first action can create a new cause of action that is not barred by res judicata, even where the new action is based on the same facts as the prior one. *Richards*, 721 F.3d at 315 (“While typically it is a new factual development that gives rise to a fresh cause of action, changes in law can also have that effect.”) (internal citations omitted); *Alvear-Velez v. Mukasey*, 540 F.3d 672 (7th Cir. 2008); Moore et al. at ¶ 131.22[3] (“when a new statute provides an independent basis for relief which did not exist at the time of the prior action, a second action on the new statute may be justified”). In *Alvear-Velez*, the Seventh Circuit clearly differentiated between “changes in case law [which] almost never provide a justification for instituting a new action” and “statutory changes that occur after the previous litigation has concluded [which] may justify a new action.” 540 F.3d at 678. As to the former, a change in precedent provides no relief from res judicata because it merely reflects the error in the prior decision, which the aggrieved party accepted by not appealing. *Id.*; *Pittston Coal Group v. Sebben*, 488 U.S. 105, 122–23 (1988); Moore et al. at ¶ 131.22[3]. By contrast, no such appellate remedy is available where a statutory barrier precludes relief. *Alvear-Velez*, 540 F.3d at 678 n.4.

Moreover, the second action is permissible where there is a statutory amendment because “the rule against claim splitting, which is one component of res judicata, is inapplicable when a statutory change creates a course of action unavailable in the previous

action.” *Alvear-Velez*, 540 F.3d at 678. See also *Maldonado v. U.S. Attorney Gen.*, 664 F.3d 1369, 1377 (11th Cir. 2011) (court rejected a res judicata defense to the removal of an alien on a new statutory ground in a second proceeding—although for the same offense as in a prior proceeding—explaining that “the doctrine does not say that a new claim is barred when it is based on a new theory not otherwise available at the time of the prior proceeding,” and thus permitted removal based on the new statutory ground); *Ljutica v. Holder*, 588 F.3d 119, 127 (2d Cir. 2009) (rejecting res judicata defense to a second removal proceeding—based on the same crime as the first proceeding—because Congress created a new ground for removal subsequent to the first action); *Dalombo Fontes v. Gonzales*, 498 F.3d 1, 2–3 (1st Cir. 2007) (noting in dicta that res judicata does not apply when Congress amends the statutory grounds for removal, “[b]ecause a different and broader definition [of removal offenses] now controlled and that definition applied retroactively, the two proceedings did not involve the same claim or cause of action”); *Marvel Characters, Inc., v. Simon*, 310 F.3d 280, 287 (2d Cir. 2002) (rejecting res judicata defense because amendments to Copyright Act provided plaintiff “an entirely new and wholly separate right than the renewal right,” which could not have been adjudicated in the first action).

Although one commenter states that “authorities supporting the notion that a change in law does not create a new cause of action are legion,” the two cases it cites are not persuasive authority on the issue of a statutory change. The two somewhat dated decisions it cites, *Hurn v. Oursler*, 289 U.S. 238 (1933), and *Friederichsen v. Renard*, 247 U.S. 207 (1918), do not involve the doctrine of res judicata and do not address whether a change in statutory law would create a new cause of action.

Even when viewed on a factual level, a survivor’s subsequent claim that meets the ACA’s filing and pendency requirements is a different cause of action. The determination of whether two proceedings involve the same cause of action requires close analysis of the underlying facts in each proceeding. See, e.g., *Duhaney v. Attorney Gen.*, 621 F.3d 340, 348 (3d Cir. 2010) (“the focus of the inquiry is whether the acts complained of were the same, whether the material facts alleged in each suit were the same, and whether the witnesses and documentation required to prove such allegations were the

same”) (internal quotation marks omitted). Res judicata, however, does not apply when “[a]lthough there are common elements of fact between the two . . . proceedings, the critical acts and the necessary documentation were different for the two proceedings.” *Id.* at 349; see also *Eckman*, ___ F.3d at ___, 2013 WL 4017160, *6 (“The mere existence of common elements of fact between two claims does not establish the same cause of action if the critical acts and the necessary documentation were different for the two claims.”); *Meekins v. United Transp. Union*, 946 F.2d 1054, 1058 (4th Cir. 1991) (res judicata inapplicable where a later suit “arises from events separate from those at issue in the first suit”). Moreover, it does not matter that the same ultimate remedy is available in both the first and second actions, as the cause of action springs out of the underlying facts, not the remedy. See *Duhaney*, 621 F.3d at 349.

Applying these principles in the context of survivors entitled under amended Section 422(l) shows that a subsequent claim is based on a different factual predicate than an original claim. In an original claim not subject to the ACA amendments, a survivor could recover only by proving that the miner’s death was due to pneumoconiosis. See 20 CFR 718.205. Resolution of this issue is based on an intensive review of medical evidence. The adjudicator is required to determine what condition or conditions resulted in the miner’s death, as well as the etiology of those conditions. In contrast, the cause of the miner’s death is not at issue in a survivor’s subsequent claim awarded pursuant to amended Section 422(l), and medical evidence is wholly irrelevant. Rather, the survivor’s entitlement is based solely on an administrative fact—whether the miner had been awarded benefits in his lifetime claim. See 30 U.S.C. 932(l). Thus, “subsequent claims arise from operative facts that are separate and distinct from those underlying [the survivors’] initial claims, and therefore constitute new causes of action.” *Richards*, 721 F.3d at 315. *Accord Eckman*, ___ F.3d at ___, 2013 WL 4017160, *6 (“material facts alleged” in prior and subsequent survivor’s claims were different; “the subsequent claim thus involves a different cause of action” not barred by res judicata).

Precluding subsequent claims of survivors in these circumstances would not further the purposes of the res judicata doctrine in any event. “[R]es judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial

resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.” *Allen v. McCurry*, 449 U.S. 90, 94 (1980); see generally 18 Wright, Miller & Cooper, Federal Practice and Procedure § 4403 (2d ed. 2002). Where subsequent claims are based on automatic entitlement, there will be little need for factual development, and most such claims can be decided in summary fashion without protracted litigation or the expenditure of significant judicial resources. Res judicata should be used as a shield against vexatious (harassing) lawsuits or to conserve resources, not as a sword to defeat plainly meritorious claims.

Furthermore, the danger of inconsistent decisions between original and subsequent claims is absent because the subsequent claim represents a different cause of action. In fact, the danger of inconsistency lies in the other direction. If res judicata bars survivors’ subsequent claims, there would be different results for similarly situated survivors who satisfy the ACA requirements based solely on the fact that one previously failed to prove a fact (death due to pneumoconiosis) that is now wholly irrelevant. See *C.I.R. v. Sunnen*, 333 U.S. 591, 599 (1948) (where revenue laws changed following original litigation, expressing concern that collateral estoppel will result in unequal treatment of taxpayers in same class). In short, there is no compelling reason why the doctrine of res judicata should be applied in situations covered by the rule.

The commenters’ assertion that the rule circumvents the ACA’s 2005 bar date is also without foundation. The rule applies only to survivors’ claims filed after January 1, 2005 and pending on or after the ACA’s enactment date. It is thus fully consistent with the ACA’s plain language, which makes automatic entitlement applicable to all qualifying survivors’ claims, both original and subsequent. It states, without qualification, that the amendments to the BLBA “apply with respect to claims filed . . . after January 1, 2005, that are pending on or after [March 23, 2010].” Public Law 111–148, § 1556(c) (2010) (emphasis added). This provision makes no distinction between miners’ and survivors’ claims, or between original and subsequent claims. Rather, as the Fourth Circuit has held, “the plain language of [Section 1556(c)] requires that amended § 932(l) apply to all claims [that satisfy Section 1556’s time limitations].” *Stacy*, 671 F.3d at 388 (emphasis in original). See also *Groves*, 705 F.3d at 555–56. Thus, “the statutory text supports [the] position that amended Section 932(l) applies to all

claims that comply with Section 1556(c)'s time limitations, including subsequent claims.” *Richards*, 721 F.3d at 314. *Accord Eckman*, ___ F.3d at ___, 2013 WL 4017160, *5 (Section 1556(c)'s plain language “encompasses” subsequent survivor claims).

Along the same lines, one commenter points to Senator Byrd's post-enactment statement that the ACA amendments will apply to “all claims that will be filed henceforth, including many claims filed by miners whose prior claims were denied, or by widows who never filed for benefits following the death of a husband” as evidence that amended Section 422(l) is not intended to apply to subsequent claims filed by survivors. *See* 156 Cong. Rec. S2083 (daily ed. March 25, 2010). The commenter has misinterpreted the passage. Even if considered persuasive authority, *see Starks*, 719 F.3d at 1283 n.9 (stating that Senator Byrd's post-enactment statement is not “legitimate legislative history”), the Senator's statement is clearly intended simply to provide illustrative examples of groups who could potentially benefit from the ACA. *See Richards*, 721 F.3d at 316 (Senator Byrd's “description of the scope of the statute as ‘including’ certain types of claims connotes that his selected examples were intended to be illustrative of the amendment's reach, not exhaustive.”). Senator Byrd was not limiting the universe of claims affected by the ACA only to miners' subsequent claims or survivors' first filings. Indeed, such a reading would lead to an absurd result since it would exclude miners who are first-time filers from accessing the revived 15-year presumption provided under Section 1556(a). *Eckman*, ___ F.3d at ___, 2013 WL 4017160, *4 (concluding that Senator Byrd's list is not necessarily “exhaustive” and pointing out that the list “does not include the largest class of potential claims: Original claims filed by miners, either pending or filed henceforth.”).

One comment argues that the application of Section 1556 to survivors' subsequent claims likely violates the constitutional separation-of-powers principle, at least where the survivor's prior claim was finally decided by a United States Court of Appeals. The commenter relies on *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) in support. Striking down a Security and Exchange Act statutory amendment that allowed plaintiffs to reinstate certain suits that had already been finally dismissed as time-barred, *Plaut* held that Article III of the Constitution established a “judicial department,” with “the power, not

merely to rule on cases, but to *decide* them, subject to review only by superior courts . . . —with an understanding . . . that a ‘judgment conclusively resolves the case’ because ‘[the judiciary] render[s] dispositive judgments.’” 514 U.S. at 218–19 (quoting Easterbrook, Presidential Review, 40 Case W. Res. L. Rev. 905, 926 (1990)).

Plaut and the separation-of-powers principle have no relevance with respect to ACA Section 1556 and proposed § 725.309. Unlike the statute at issue in *Plaut*, Section 1556 and the rule implementing it do not require the reopening of final judicial decisions. Rather, Section 1556 changed the underlying substantive law, thereby creating a new cause of action that applies only to claims pending on or after its enactment date (March 23, 2010). *See, e.g., In re Swanson*, 540 F.3d 1368, 1378–79 (Fed. Cir. 2008) (rejecting separation-of-powers challenge to reexamination of patent previously upheld by court, as two examinations were “differing proceedings with different evidentiary standards”). Far from allowing a legislative veto of a prior judicial determination, Section 1556 and the proposed rule give “full credit” to prior claim denial. *Buck Creek Coal Co. v. Sexton*, 706 F.3d 756, 759–60 (6th Cir. 2013) (quoting *U.S. Steel Mining Co., LLC, v. Director, OWCP*, 386 F.3d 977, 990 (11th Cir. 2004)). The rules governing the date from which benefits are payable—including those payable on subsequent survivor claims—evidence this principle because no benefits are payable “for any period prior to the date upon which the order denying the prior claim became final.” 20 CFR 725.309(d)(5) (2012).

(c) No other comments on this section were received and the Department has promulgated the rule as proposed.

IV. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

This rulemaking imposes no new collections of information.

V. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

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). E.O. 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It also instructs agencies to review “rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.” In accordance with this Executive Order, the Department has proposed certain changes to these rules not otherwise required to implement the ACA's statutory amendments.

These final rules are consistent with the statutory mandate, reflecting the policy choices made by Congress in adopting the ACA amendments. Those choices reflect Congress' rational decision “to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor—the operators and the coal consumers.” *Stacy*, 671 F.3d at 383 (quoting *Usery*, 428 U.S. at 18)). In restoring Section 411(c)(4), “Congress decided to ease the path to recovery for claimants who could prove at least 15 years of coal mine employment and a totally disabling pulmonary impairment,” thus giving miners and their survivors “a better shot at obtaining benefits.” *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 849 (7th Cir. 2011). And in restoring Section 422(l), Congress made “a legislative choice to compensate a miner's dependents for the suffering they endured due to the miner's pneumoconiosis or as a means to provide a miner with peace of mind that his dependents will continue to receive benefits after his death.” *Campbell*, 662 F.3d at 258. The rules faithfully implement these Congressional directives.

Although additional expenditures associated with these rules primarily flow from the statutory amendments themselves rather than the rules, the Department has evaluated the financial impact of the amendments' application on coal mine operators, and in particular those classified as small businesses, as set forth in the NPRM. *See* 77 FR at 19470–74. Coal mine operators' outlays for the workers' compensation insurance necessary to secure the payment of any benefits resulting from the amendments will likely increase, at least in the short run. Self-insured operators may also be required to pay out more in compensation to entitled miners and survivors.

These operator expenditures are transfer payments as defined by OMB Circular A–4 (*i.e.*, payments from one group to another that do not affect the total resources available to society). To

estimate additional workers' compensation insurance premiums that may result from the ACA amendments, the Department projected new claim filings, award rates and associated insurance premiums both with and without the amendments for the ten-year period 2010 through 2019. Based on the projected differences, the Department estimates that annualized industry insurance premiums will increase \$35 million over this ten-year period as a result of the ACA amendments. This figure likely overstates the premium increase because it is based on two important assumptions designed to consider a maximum-impact scenario: The estimates assume that all coal mine operators purchase commercial workers' compensation insurance rather than self-insuring, and the insurance rates used are based on the higher rates charged by assigned-risk plans rather than the lower rates generally available in the voluntary market. The Department's estimate is explained more fully in the Regulatory Flexibility Act discussion below.

Transfers also occur between insurance carriers or self-insured coal mine operators and benefit recipients. These transfers take the form of benefit payments. The amount of benefits payable on any given award depends upon a variety of factors, including the benefit recipient's identity, the length of the recipient's life, and whether the recipient has any eligible dependents for whom the basic benefit amount may be augmented. *See generally* 20 CFR 725.202–725.228; 725.520 (2012).

For example, in FY 2010, the Department oversaw 28,671 active Part C BLBA claims with income and medical benefit disbursements of approximately \$238 million. This translates into an annual benefit rate of \$8,316 per claim, or an average monthly benefit of \$693. Of the total active claims in 2010 payable by coal mine operators and their insurance carriers, an estimated 156 were new awards resulting from the ACA amendments, translating into approximately \$1.3 million in additional income and medical benefit disbursements in the first year. Accordingly, the Department's predicted 425 new awards in responsible operator claims for 2011 equates to an estimated \$3.5 million increase in benefit disbursements for the first year.

Payments from the Black Lung Disability Trust Fund will also increase due to a small number of claims awarded under the ACA amendments and for which no coal mine operator may be held liable. The Department

estimates that Trust Fund benefit payments will increase a total of approximately \$48.3 million over the 10-year period from 2010–2019. Despite this amendment-related increase, Trust Fund benefit payments as a whole are decreasing annually. The majority of the Trust Fund's liabilities stem from earlier days of the black lung program, when the Trust Fund bore liability for a much higher percentage of awarded claims. Trust Fund payments cease when these benefit recipients pass away. As a result, the Trust Fund's expenditures continue to decrease each year.

Claimants who obtain benefits under the ACA amendments will gain a variety of advantages that are difficult to quantify in monetary terms. A disabled miner "has suffered in at least two ways: His health is impaired, and he has been rendered unable to perform the kind of work to which he has adapted himself." *Usery*, 428 U.S. at 21. Income disbursements give these miners some financial relief and provide a modicum of compensation for the health impairment the miners suffered in working to meet the Nation's energy needs. Medical treatment benefits provide health care to miners for the injury caused by their occupationally acquired pulmonary diseases and disabilities so as to maximize both their longevity and quality of life. Both income and medical benefits alleviate drains on public assistance resources. And miners awarded benefits under the ACA amendments may also rest assured that their dependent survivors will not be left wholly without financial support.

In exchange, coal mine operators continue to be protected from common law tort actions that could otherwise be brought by these miners or their survivors for pneumoconiosis arising from the miner's employment and related disabilities or death. *See* 30 U.S.C. 905(a), incorporated by 30 U.S.C. 932(a). And because the monthly benefit amounts payable are fixed by statute, compensation costs are predictable and feasible for insurers to cover at an affordable rate. This predictability also allows coal mine operators to pass their costs for insurance (or benefits if self-insured) on to consumers.

From a program-administration viewpoint, the Department will realize some cost savings from the ACA amendment restoring Section 422(l)'s automatic entitlement for survivors. Before the amendment, the Department had to develop each survivor's claim, including obtaining relevant medical evidence, evaluating that evidence, and issuing a detailed decision adjudicating whether the miner's death was due to pneumoconiosis. That administrative

work, and the costs associated with it, is no longer necessary where the survivor is entitled under Section 422(l). Instead, the regulations adopt a streamlined process for those cases that eliminates most evidentiary development and evaluation. This process has the dual benefit of delivering compensation to entitled survivors more quickly and reducing the costs associated with that delivery.

The Department received only two comments on its economic analysis of the impact of the ACA amendments and the proposed rules. The Department's response to those two comments is included in the Regulatory Flexibility Act section below.

The Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that the Department's rule represents a "significant regulatory action" under Section 3(f)(4) of Executive Order 12866 and has reviewed the rule.

VI. Small Business Regulatory Enforcement Fairness Act of 1996

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996, enacted as Title II of Public Law 104–121, 201–253, 110 Stat. 847, 857 (1996), the Department will report promulgation of this rule to both Houses of the Congress and to the Comptroller General prior to its effective date. The report will state that the rule is not a "major rule" as defined under 5 U.S.C. 804(2).

VII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, directs agencies to assess the effects of Federal Regulatory Actions on State, local, and tribal governments, and the private sector, "other than to the extent that such regulations incorporate requirements specifically set forth in law." 2 U.S.C. 1531. For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, tribal governments, or increased expenditures by the private sector of more than \$100,000,000.

VIII. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency to prepare an initial regulatory flexibility analysis describing the proposed rule's impact

on small entities. 5 U.S.C. 603. The RFA also requires agencies to prepare a final regulatory flexibility analysis when promulgating the final rule. 5 U.S.C. 604. In either instance, the RFA does not require a regulatory flexibility analysis if the agency certifies that the proposed or final rule will not have “a significant economic impact on a substantial number of small entities” and provides the factual basis for the certification. 5 U.S.C. 605. The Department has determined that a final regulatory flexibility analysis is not required for this rulemaking.

The Department conducted an initial regulatory flexibility analysis (IRFA) prior to publishing the proposed rule, informed the public how to obtain a copy of the complete analysis, summarized the analysis in the preamble to the proposed rule, and asked for public comment on all aspects of the costs and benefits of the proposed rule, particularly with respect to impacts on small businesses. 77 FR at 19471–74. The Department surveyed the industry and determined that virtually all coal mine operators in the United States fall within the Small Business Administration’s definition of a small business. 77 FR at 19471–72. Even though the statutory amendments themselves, rather than the rules implementing them, account for most, if not all, of the additional costs imposed on the coal mining industry, the Department estimated the maximum financial impact that might result from the amendments and rules by evaluating potential increased costs to purchase workers’ compensation insurance. See 30 U.S.C. 933 (requiring all coal mine operators to either purchase commercial workers’ compensation insurance or qualify as a self-insurer to insure covered workers). The Department determined that the ACA amendments and the implementing rules would impose an annualized cost on the industry of \$35 million—or only one-tenth of one percent of average annual industry revenues—over the ten years from 2010 to 2019, with decreasing costs thereafter. 77 FR at 19473. The Department noted that these estimates likely overstated the actual cost impact and were transitory in nature. 77 FR at 19471–73.

One comment generally states that the Department’s economic analysis is opaque, unsupported by data or analysis, and lacks source citations for such data and analysis necessary to allow it to adequately review the Department’s conclusions. The comment also believes the Department’s analysis was overly dismissive given the prospect of reopening thousands of

previously denied survivors’ claims and allowing re-filing of an unknown number of denied miners’ claims. Another comment questions how the Department calculated the number of survivors (and the resulting benefits payable) who would be automatically entitled to benefits under amended Section 422(l). This comment was made in the context of the Department’s construction of subsequent survivor claims.

The Department believes its economic analysis was complete. The Department prepared a fully documented and explained IRFA that cited both internal and external data sources, and made the IRFA available to the public through the internet and by individual request. 77 FR at 19471. One comment grossly overstates the potential impact of subsequent survivors’ claims liability on the costs associated with the amendments and the rule. In the NPRM, the Department estimated that out of a pool of 445 potential survivors in this category, only 317 might file subsequent claims to assert entitlement under amended Section 422(l). 77 FR at 19473–74. Actual experience has shown that number to be far lower. To date, only 143 survivors have filed subsequent claims seeking benefits under amended Section 422(l).

Moreover, as the Department noted in the NPRM, the financial impact of revised § 725.309 on coal mine operators is mitigated in two ways. 77 FR at 19474. First, the survivors in question would not be entitled to benefits for the period prior to the day on which the prior denial became final. Second, an operator who ensures its BLBA liabilities with commercial insurance will not incur any additional costs because it has already purchased the insurance necessary to cover the survivor’s claim. For these reasons, the Department does not believe that allowing re-filing survivors to receive benefits under amended Section 422(l) imposes significant hardships on small coal mine businesses.

Significantly, no commenter or interested small business brought forth any information that contradicts the Department’s conclusions in the IRFA, despite the Department’s specific request for comments about adverse effects on small businesses. For instance, no one submitted documentation detailing actual experience with either increased workers’ compensation insurance premium rates or self-insurance expenses since enactment of the ACA amendments in 2010. Nor did any comment allege that such increases have occurred. The Department therefore has

no reason to conclude that its cost estimates set forth in the IRFA are understated or that these businesses will incur significant adverse financial impacts.

Thus, although most coal mine operators are small businesses, the Department does not believe that an estimated annualized cost imposed for complying with the ACA amendments, as implemented by these regulations, amounting to at most one-tenth of one percent of industry revenues is a significant economic impact. The Department therefore certifies that this final rule will not have significant economic impact on a substantial number of small entities. Accordingly, it has not prepared a final regulatory impact analysis. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. See 5 U.S.C. 605.

IX. Executive Order 13132 (Federalism)

The Department has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The final rule will not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” *Id.*

X. Executive Order 12988 (Civil Justice Reform)

The final rule meets the 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.

XI. Congressional Review Act

The final rule is not a “major rule” as defined in the Congressional Review Act, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 20 CFR Parts 718 and 725

Total Disability due to pneumoconiosis; coal miners' entitlement to benefits; survivors' entitlement to benefits.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR parts 718 and 725 as follows:

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

- 1. The authority citation for part 718 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 934, 936; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

- 2. Revise § 718.1 to read as follows:

§ 718.1 Statutory provisions.

Section 402(f) of the Act authorizes the Secretary of Labor to establish criteria for determining total disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under Part C of the Act. Section 402(f) further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques used to take chest roentgenograms (x-rays) in connection with a claim for benefits under the Act.

- 3. Revise § 718.2 to read as follows:

§ 718.2 Applicability of this part.

(a) With the exception of the second sentence of § 718.204(a), this part is applicable to the adjudication of all claims filed on or after June 30, 1982 under Part C of the Act. It provides standards for establishing entitlement to benefits under the Act and describes the criteria for the development of medical evidence used in establishing such entitlement. The second sentence of § 718.204(a) is applicable to the adjudication of all claims filed after January 19, 2001.

(b) Publication of certain provisions or parts of certain provisions that apply only to claims filed prior to June 30, 1982, or to claims subject to Section 435 of the Act, has been discontinued because those provisions affect an increasingly smaller number of claims. The version of Part 718 set forth in 20

CFR, parts 500 to end, edition revised as of April 1, 2010, applies to the adjudication of all claims filed prior to June 30, 1982, as appropriate.

(c) The provisions of this part must, to the extent appropriate, be construed together in the adjudication of claims.

- 4. In § 718.3, revise paragraph (a) to read as follows:

§ 718.3 Scope and intent of this part.

(a) This part sets forth the standards to be applied in determining whether a coal miner is or was totally disabled due to pneumoconiosis or died due to pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

* * * * *

- 5. In § 718.202, revise paragraph (a)(3) to read as follows:

§ 718.202 Determining the existence of pneumoconiosis.

(a) * * *

(3) If the presumptions described in § 718.304 or § 718.305 are applicable, it must be presumed that the miner is or was suffering from pneumoconiosis.

* * * * *

- 6. Revise § 718.205 to read as follows:

§ 718.205 Death due to pneumoconiosis.

(a) Benefits are provided to eligible survivors of a miner whose death was due to pneumoconiosis. In order to receive benefits based on a showing of death due to pneumoconiosis, a claimant must prove that:

- (1) The miner had pneumoconiosis (*see* § 718.202);
 (2) The miner's pneumoconiosis arose out of coal mine employment (*see* § 718.203); and
 (3) The miner's death was due to pneumoconiosis as provided by this section.

(b) Death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
 (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
 (3) Where the presumption set forth at § 718.304 is applicable, or
 (4) For survivors' claims filed after January 1, 2005, and pending on or after March 23, 2010, where the presumption at § 718.305 is invoked and not rebutted.

(5) However, except where the § 718.304 presumption is invoked, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury (including suicide) or the principal cause of death was a medical condition not related to pneumoconiosis, unless the claimant establishes (by proof or presumption) that pneumoconiosis was a substantially contributing cause of death.

(6) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

- 7. Revise § 718.301 to read as follows:

§ 718.301 Establishing length of employment as a miner.

The presumptions set forth in §§ 718.302 and 718.305 apply only if a miner worked in one or more coal mines for the number of years required to invoke the presumption. The length of the miner's coal mine work history must be computed as provided by 20 CFR 725.101(a)(32).

§ 718.303 [Removed and Reserved]

- 8. Remove and reserve § 718.303.
 ■ 9. Revise § 718.305 to read as follows:

§ 718.305 Presumption of pneumoconiosis.

(a) *Applicability.* This section applies to all claims filed after January 1, 2005, and pending on or after March 23, 2010.

(b) *Invocation.* (1) The claimant may invoke the presumption by establishing that—

- (i) The miner engaged in coal-mine employment for fifteen years, either in one or more underground coal mines, or in coal mines other than underground mines in conditions substantially similar to those in underground mines, or in any combination thereof; and
 (ii) The miner or survivor cannot establish entitlement under § 718.304 by means of chest x-ray evidence; and
 (iii) The miner has, or had at the time of his death, a totally disabling respiratory or pulmonary impairment established pursuant to § 718.204, except that § 718.204(d) does not apply.

(2) The conditions in a mine other than an underground mine will be considered "substantially similar" to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there.

(3) In a claim involving a living miner, a miner's affidavit or testimony, or a spouse's affidavit or testimony, may not be used by itself to establish the existence of a totally disabling respiratory or pulmonary impairment.

(4) In the case of a deceased miner, affidavits (or equivalent sworn

testimony) from persons knowledgeable of the miner's physical condition must be considered sufficient to establish total disability due to a respiratory or pulmonary impairment if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination must not be based solely upon the affidavits or testimony of any person who would be eligible for benefits (including augmented benefits) if the claim were approved.

(c) *Facts presumed.* Once invoked, there will be rebuttable presumption—

(1) In a miner's claim, that the miner is totally disabled due to pneumoconiosis, or was totally disabled due to pneumoconiosis at the time of death; or

(2) In a survivor's claim, that the miner's death was due to pneumoconiosis.

(d) *Rebuttal*—(1) *Miner's claim.* In a claim filed by a miner, the party opposing entitlement may rebut the presumption by—

(i) Establishing both that the miner does not, or did not, have:

(A) Legal pneumoconiosis as defined in § 718.201(a)(2); and

(B) Clinical pneumoconiosis as defined in § 718.201(a)(1), arising out of coal mine employment (*see* § 718.203); or

(ii) Establishing that no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201.

(2) *Survivor's claim.* In a claim filed by a survivor, the party opposing entitlement may rebut the presumption by—

(i) Establishing both that the miner did not have:

(A) Legal pneumoconiosis as defined in § 718.201(a)(2); and

(B) Clinical pneumoconiosis as defined in § 718.201(a)(1), arising out of coal mine employment (*see* § 718.203); or

(ii) Establishing that no part of the miner's death was caused by pneumoconiosis as defined in § 718.201.

(3) The presumption must not be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling obstructive respiratory or pulmonary disease of unknown origin.

§ 718.306 [Removed and Reserved]

■ 10. Remove and reserve § 718.306.

■ 11. Revise the introductory text of Appendix C to Part 718 to read as follows:

Appendix C to Part 718—Blood-Gas Tables

The following tables set forth the values to be applied in determining whether total disability may be established in accordance with § 718.204(b)(2)(ii). The values contained in the tables are indicative of impairment only. They do not establish a degree of disability except as provided in § 718.204(b)(2)(ii) of this subchapter, nor do they establish standards for determining normal alveolar gas exchange values for any particular individual. Tests must not be performed during or soon after an acute respiratory or cardiac illness. A miner who meets the following medical specifications must be found to be totally disabled, in the absence of rebutting evidence, if the values specified in one of the following tables are met:

* * * * *

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 12. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 13. Revise § 725.1 to read as follows:

§ 725.1 Statutory provisions.

(a) *General.* Subchapter IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Amendments Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Amendments of 1981, the Black Lung Benefits Revenue Act of 1981, the Black Lung Consolidation of Responsibility Act of 2002, and the Patient Protection and Affordable Care Act of 2010 (together comprising the Black Lung Benefits Act (*see* § 725.101(a)(1))) provides for the payment of benefits to certain disabled coal miners and their survivors. *See* § 725.201.

(b) *Part B.* Part B of subchapter IV of the Act provided that claims filed before July 1, 1973 were to be filed with, and adjudicated and administered by, the Social Security Administration (SSA). If awarded, these claims were paid by SSA out of appropriated funds. The Black Lung Consolidation of Administrative Responsibility Act (*see* paragraph (h) of this section) transferred all responsibility for continued administration of these claims to the Department of Labor.

(c) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974, are filed, adjudicated, and paid under the provisions of part C of subchapter IV of the Act. Part C requires that a claim filed on or after January 1, 1974, shall be filed under an applicable approved State workers' compensation law, or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under Section 422 of the Act. Claims filed with the Secretary of Labor under part C are processed and adjudicated by the Secretary. Individual coal mine operators are primarily liable for benefits; however, if the miner's last coal mine employment terminated before January 1, 1970, or if no responsible operator can be identified, benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under part C are subject to certain incorporated provisions of the Longshore and Harbor Workers' Compensation Act.

(d) *Changes made by the Black Lung Benefits Reform Act of 1977.* The Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are:

(1) A provision which clarifies the definition of "pneumoconiosis" to include any "chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment";

(2) A provision which defines "miner" to include any person who works or has worked in or around a coal mine or coal preparation facility, and in coal mine construction or coal transportation under certain circumstances;

(3) A provision that continued employment in a coal mine is not conclusive proof that a miner is not or was not totally disabled;

(4) A provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a part C claim;

(5) Provisions relating to the treatment to be accorded a survivor's affidavit, certain X-ray interpretations, and certain autopsy reports in the development of a claim; and

(6) Other clarifying, procedural, and technical amendments.

(e) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a

specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under part C of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(f) *Changes made by the Black Lung Benefits Amendments of 1981.* The Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits, and applied the changes to claims filed on or after January 1, 1982. Among these are:

(1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a means of auditing the validity of the claim;

(2) The rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable (but the presumption was reinstated for claims filed after January 1, 2005, and pending on or after March 23, 2010, by the Patient Protection and Affordable Care Act of 2010 (see paragraph (i) of this section));

(3) In the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons not eligible to receive benefits as a result of the adjudication of the claim will be considered

sufficient to establish entitlement to benefits;

(4) Unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on and after January 1, 1982, only when the miner's death was due to pneumoconiosis (but for survivors' claims filed after January 1, 2005, and pending on or after March 23, 2010, an award of a miner's claim may form the basis for a survivor's entitlement under the Patient Protection and Affordable Care Act of 2010 (see paragraph (i) of this section));

(5) Benefits payable under this part are subject to an offset on account of excess earnings by the miner; and

(6) Other technical amendments.

(g) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the fund has repaid all advances received from the United States Treasury and the interest on all such advances. With respect to claims filed on or after January 1, 1982, the fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the fund.

(h) *Changes made by the Black Lung Consolidation of Administrative Responsibility Act.* The Black Lung Consolidation of Administrative Responsibility Act of 2002 transferred administrative responsibility for all claims previously filed with or administered by the Social Security Administration to the Department of Labor, effective January 31, 2003. As a result, certain obsolete provisions in the BLBA (30 U.S.C. 904, 924a, and 945) were repealed. Various technical changes were made to other statutory provisions.

(i) *Changes made by the Patient Protection and Affordable Care Act of 2010.* The Patient Protection and Affordable Care Act of 2010 (the ACA) changed the entitlement criteria for miners' and survivors' claims filed after January 1, 2005, and pending on or after March 23, 2010, by reinstating two provisions made inapplicable by the Black Lung Benefits Amendments of 1981.

(1) For miners' claims meeting these date requirements, the ACA reinstated the rebuttable presumption that the miner is (or was) totally disabled due to pneumoconiosis if the miner has (or had) 15 or more years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment.

(2) For survivors' claims meeting these date requirements, the ACA made two changes. First, it reinstated the rebuttable presumption that the miner's death was due to pneumoconiosis if the miner had 15 years or more of qualifying coal mine employment and was totally disabled by a respiratory or pulmonary impairment at the time of death. Second, it reinstated derivative survivors' entitlement. As a result, an eligible survivor will be entitled to benefits if the miner is or was found entitled to benefits on his or her lifetime claim based on total disability due to pneumoconiosis arising out of coal-mine employment.

(j) *Longshore Act provisions.* The adjudication of claims filed under part C of the Act (i.e., claims filed on or after January 1, 1974) is governed by various procedural and other provisions contained in the Longshore and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by section 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time-definite-traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in Section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973, and all such changes are specified in this part. No other departure from the incorporated provisions of the LHWCA is intended.

(k) *Social Security Act provisions.* Section 402 of Part A of the Act incorporates certain definitional provisions from the Social Security Act, 42 U.S.C. 301 *et seq.* Section 430 provides that the 1972, 1977 and 1981 amendments to part B of the Act shall also apply to part C "to the extent appropriate." Sections 412 and 413 incorporate various provisions of the Social Security Act into part B of the Act. To the extent appropriate, therefore, these provisions also apply to part C. In certain cases, the Department has varied the terms of the Social Security Act provisions to accommodate the unique needs of the black lung

benefits program. Parts of the Longshore and Harbor Workers' Compensation Act are also incorporated into part C. Where the incorporated provisions of the two acts are inconsistent, the Department has exercised its broad regulatory powers to choose the extent to which each incorporation is appropriate. Finally, Section 422(g), contained in part C of the Act, incorporates 42 U.S.C. 403(b)-(l).

■ 14. Revise § 725.2 to read as follows:

§ 725.2 Purpose and applicability of this part.

(a) This part sets forth the procedures to be followed and standards to be applied in filing, processing, adjudicating, and paying claims filed under part C of subchapter IV of the Act.

(b) This part applies to all claims filed under part C of subchapter IV of the Act on or after June 30, 1982. Publication of certain provisions or parts of certain provisions that apply only to claims filed prior to June 30, 1982, or to claims subject to Section 435 of the Act, has been discontinued because those provisions affect an increasingly smaller number of claims. The version of Part 725 set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 2010, applies to the adjudication of all claims filed prior to June 30, 1982, as appropriate.

(c) The provisions of this part reflect revisions that became effective on January 19, 2001. This part applies to all claims filed after January 19, 2001 and all benefits payments made on such claims. With the exception of the following sections, this part also applies to the adjudication of claims that were pending on January 19, 2001 and all benefits payments made on such claims: §§ 725.101(a)(31), 725.204, 725.212(b), 725.213(c), 725.214(d), 725.219(d), 725.309, 725.310, 725.351, 725.360, 725.367, 725.406, 725.407, 725.408, 725.409, 725.410, 725.411, 725.412, 725.414, 725.415, 725.416, 725.417, 725.418, 725.421(b), 725.423, 725.454, 725.456, 725.457, 725.458, 725.459, 725.465, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547, 725.701(e). The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1999, apply to the adjudications of claims that were pending on January 19, 2001. For purposes of construing the provisions of this section, a claim will be considered pending on January 19, 2001 if it was not finally denied more than one year prior to that date.

■ 15. In § 725.101, revise paragraphs (a)(1), (a)(2), (a)(4), (a)(32)(i) through (iv), and (b) to read as follows:

§ 725.101 Definition and use of terms.

(a) * * *

(1) The Act means the Black Lung Benefits Act, 30 U.S.C. 901-44, as amended.

(2) The Longshore Act or LHWCA means the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901-950, as amended from time to time.

* * * * *

(4) Administrative law judge means a person qualified under 5 U.S.C. 3105 to conduct hearings and adjudicate claims for benefits filed pursuant to section 415 and part C of the Act. Until March 1, 1979, it also means an individual appointed to conduct such hearings and adjudicate such claims under Public Law 94-504.

* * * * *

(32) * * *

(i) If the evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totaling one year, then the miner has worked one year in coal mine employment for all purposes under the Act. If a miner worked fewer than 125 working days in a year, he or she has worked a fractional year based on the ratio of the actual number of days worked to 125. Proof that the miner worked more than 125 working days in a calendar year or partial periods totaling a year, does not establish more than one year.

(ii) To the extent the evidence permits, the beginning and ending dates of all periods of coal mine employment must be ascertained. The dates and length of employment may be established by any credible evidence including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony. If the evidence establishes that the miner's employment lasted for a calendar year or partial periods totaling a 365-day period amounting to one year, it must be presumed, in the absence of evidence to the contrary, that the miner spent at least 125 working days in such employment.

(iii) If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). A copy of the BLS table must be made a part of the record if the adjudication officer uses this method to

establish the length of the miner's work history.

(iv) Periods of coal mine employment occurring outside the United States must not be considered in computing the miner's work history.

(b) Statutory terms. The definitions contained in this section must not be construed in derogation of terms of the Act.

* * * * *

■ 16. In § 725.201:

- a. Revise paragraph (a);
- b. Remove paragraph (b); and
- c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

The revision reads as follows:

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) Part C of the Act provides for the payment of periodic benefits in accordance with this part to:

(1) A miner who meets the conditions of entitlement set forth in § 725.202(d); or

(2) The surviving spouse or surviving divorced spouse of a deceased miner who meets the conditions of entitlement set forth in § 725.212; or,

(3) Where neither exists, the child of a deceased miner who meets the conditions of entitlement set forth in § 725.218; or

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, who meet the conditions of entitlement set forth in § 725.222; or

(5) The child of a miner's surviving spouse who was receiving benefits under Part C of the Act at the time of such spouse's death.

* * * * *

■ 17. In § 725.212, republish paragraph (a)(3) introductory text and revise paragraphs (a)(3)(i) and (ii) to read as follows:

§ 725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.

(a) * * *

(3) The deceased miner either:

(i) Is determined to have died due to pneumoconiosis; or

(ii) Filed a claim for benefits on or after January 1, 1982, which results or resulted in a final award of benefits, and the surviving spouse or surviving divorced spouse filed a claim for benefits after January 1, 2005 which was pending on or after March 23, 2010.

* * * * *

■ 18. In § 725.218, republish paragraph (a) introductory text and revise

paragraphs (a)(1) and (2) to read as follows:

§ 725.218 Conditions of entitlement; child.

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Is determined to have died due to pneumoconiosis; or

(2) Filed a claim for benefits on or after January 1, 1982, which results or resulted in a final award of benefits, and the surviving child filed a claim for benefits after January 1, 2005 which was pending on or after March 23, 2010.

* * * * *

■ 19. In § 725.222, republish paragraph (a)(5) introductory text and revise paragraphs (a)(5)(i) and (ii) to read as follows:

§ 725.222 Conditions of entitlement; parent, brother or sister.

(a) * * *

(5) The deceased miner:

(i) Is determined to have died due to pneumoconiosis; or

(ii) Filed a claim for benefits on or after January 1, 1982, which results or resulted in a final award of benefits, and the surviving parent, brother or sister filed a claim for benefits after January 1, 2005 which was pending on or after March 23, 2010.

* * * * *

■ 20. Revise § 725.309 to read as follows:

§ 725.309 Additional claims; effect of prior denial of benefits.

(a) If a claimant files a claim under this part while another claim filed by the claimant under this part is still pending, the later claim must be merged with the earlier claim for all purposes. For purposes of this section, a claim must be considered pending if it has not yet been finally denied.

(b) If a claimant files a claim under this part within one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim must be considered a request for modification of the prior denial and will be processed and adjudicated under § 725.310.

(c) If a claimant files a claim under this part more than one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim must be considered a subsequent claim for benefits. A subsequent claim will be processed and adjudicated in accordance with the

provisions of subparts E and F of this part. Except as provided in paragraph (1) below, a subsequent claim must be denied unless the claimant demonstrates that one of the applicable conditions of entitlement (see §§ 725.202(d) (miner), 725.212 (spouse), 725.218 (child), and 725.222 (parent, brother, or sister)) has changed since the date upon which the order denying the prior claim became final. The applicability of this paragraph may be waived by the operator or fund, as appropriate. The following additional rules apply to the adjudication of a subsequent claim:

(1) The requirement to establish a change in an applicable condition of entitlement does not apply to a survivor's claim if the requirements of §§ 725.212(a)(3)(ii), 725.218(a)(2), or 725.222(a)(5)(ii) are met, and the survivor's prior claim was filed—

(i) On or before January 1, 2005, or

(ii) After January 1, 2005 and was finally denied prior to March 23, 2010.

(2) Any evidence submitted in connection with any prior claim must be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim.

(3) For purposes of this section, the applicable conditions of entitlement are limited to those conditions upon which the prior denial was based. For example, if the claim was denied solely on the basis that the individual was not a miner, the subsequent claim must be denied unless the individual worked as a miner following the prior denial. Similarly, if the claim was denied because the miner did not meet one or more of the eligibility criteria contained in part 718 of this subchapter, the subsequent claim must be denied unless the miner meets at least one of the criteria that he or she did not meet previously.

(4) If the applicable condition(s) of entitlement relate to the miner's physical condition, the subsequent claim may be approved only if new evidence submitted in connection with the subsequent claim establishes at least one applicable condition of entitlement. A subsequent claim filed by a surviving spouse, child, parent, brother, or sister must be denied unless the applicable conditions of entitlement in such claim include at least one condition unrelated to the miner's physical condition at the time of his death.

(5) If the claimant demonstrates a change in one of the applicable conditions of entitlement, no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (see

§ 725.463), will be binding on any party in the adjudication of the subsequent claim. However, any stipulation made by any party in connection with the prior claim will be binding on that party in the adjudication of the subsequent claim.

(6) In any case in which a subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final.

(d) In any case involving more than one claim filed by the same claimant, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid will be subject to collection or offset under subpart H of this part.

■ 21. Revise § 725.418 to read as follows:

§ 725.418 Proposed decision and order.

(a) Within 20 days after the termination of all informal conference proceedings, or, if no informal conference is held, at the conclusion of the period permitted by § 725.410(b) for the submission of evidence, the district director will issue a proposed decision and order. A proposed decision and order is a document, issued by the district director after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the district director. A proposed decision and order will be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the district director at any time during the adjudication of any claim if:

(1) Issuance is authorized or required by this part;

(2) The district director determines that its issuance will expedite the adjudication of the claim; or

(3) The district director determines that the claimant is a survivor who is entitled to benefits under 30 U.S.C. 932(l). In such cases, the district director may designate the responsible operator in the proposed decision and order regardless of whether the requirements of paragraph (d) of this section have been met. Any operator identified as liable for benefits under this paragraph may challenge the finding of liability by timely requesting revision of the proposed decision and order and specifically indicating disagreement with that finding. See 20 CFR 725.419(a) and (b). In such cases, the district director must allow all parties 30 days within which to submit liability evidence. At the end of this

period, the district director must issue a new proposed decision and order.

(b) A proposed decision and order must contain findings of fact and conclusions of law. It must be served on all parties to the claim by certified mail.

(c) The proposed decision and order must contain a notice of the right of any interested party to request a formal hearing before the Office of Administrative Law Judges. If the proposed decision and order is a denial of benefits, and the claimant has previously filed a request for a hearing, the proposed decision and order must notify the claimant that the case will be referred for a hearing pursuant to the previous request unless the claimant

notifies the district director that he no longer desires a hearing. If the proposed decision and order is an award of benefits, and the designated responsible operator has previously filed a request for a hearing, the proposed decision and order must notify the operator that the case will be referred for a hearing pursuant to the previous request unless the operator notifies the district director that it no longer desires a hearing.

(d) The proposed decision and order must reflect the district director's final designation of the responsible operator liable for the payment of benefits. Except as provided in paragraph (a)(3) of this section, no operator may be finally designated as the responsible

operator unless it has received notification of its potential liability pursuant to § 725.407, and the opportunity to submit additional evidence pursuant to § 725.410. The district director must dismiss, as parties to the claim, all other potentially liable operators that received notification pursuant to § 725.407 and that were not previously dismissed pursuant to § 725.410(a)(3).

Signed at Washington, DC, this 16th day of September, 2013.

Gary A. Steinberg,
*Acting Director, Office of Workers'
Compensation Programs.*

[FR Doc. 2013-22874 Filed 9-24-13; 8:45 am]

BILLING CODE 4510-CK-P



FEDERAL REGISTER

Vol. 78

Wednesday,

No. 186

September 25, 2013

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 600

Office of the Secretary

45 CFR Part 144

Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 600****Office of the Secretary****45 CFR Part 144**

[CMS–2380–P]

RIN 0938–AR93

Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would establish the Basic Health Program, as required by section 1331 of the Affordable Care Act. The Basic Health Program provides states the flexibility to establish a health benefits coverage program for low-income individuals who would otherwise be eligible to purchase coverage through the state's Affordable Insurance Exchange (Exchange, also called a Health Insurance Marketplace). The Basic Health Program would complement and coordinate with enrollment in a QHP through the Exchange, as well as with enrollment in Medicaid and the Children's Health Insurance Program (CHIP). This proposed rule sets forth a framework for Basic Health Program eligibility and enrollment, benefits, delivery of health care services, transfer of funds to participating states, and federal oversight. Additionally, this rule would amend other rules issued by the Secretary of the Department of Health and Human Services (Secretary) in order to clarify the applicability of those rules to the Basic Health Program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 25, 2013.

ADDRESSES: In commenting, please refer to file code CMS–2380–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2380–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2380–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information

Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jessica Schubel (410) 786–3032 or Carey Appold (410) 786–2117.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

- I. Executive Summary
- II. Background
 - A. Introduction
 - B. Stakeholder Consultation and Input
- III. Provisions of the Proposed Rule
 - A. Scope and definitions (§ 600.5)
 - B. Establishment of a Basic Health Program
 - 1. Program description (§ 600.100)
 - 2. Basis, scope and applicability (§ 600.105)
 - 3. Basic Health Program Blueprint (§ 600.110)
 - 4. Development and submission of a BHP Blueprint (§ 600.115)
 - 5. Certification of a BHP Blueprint (§ 600.120)
 - 6. Revisions to a certified Blueprint (§ 600.125)
 - 7. Withdrawal of a Blueprint prior to implementation (§ 600.130)
 - 8. Notice of timing of HHS action on a BHP Blueprint (§ 600.135)
 - 9. State termination of BHP (§ 600.140)
 - 10. HHS withdrawal of certification and termination of a BHP (§ 600.142)
 - 11. State program administration and program operations (§ 600.145)
 - 12. Enrollment assistance and information requirements (§ 600.150)
 - 13. Tribal Consultation (§ 600.155)

14. Provision of BHP to American Indians and Alaskan Natives (§ 600.160)
15. Nondiscrimination standards (§ 600.165)
16. Annual report content and timing (§ 600.170)
- C. Federal Program Administration
 1. Federal program reviews and audits (§ 600.200)
- D. Eligibility and Enrollment
 1. Basis, scope and applicability (§ 600.300)
 2. Eligible individuals (§ 600.305)
 3. Application (§ 600.310)
 4. Certified Application Counselors (§ 600.315)
 5. Determination of eligibility for and enrollment in BHP (§ 600.320)
 6. Coordination with other insurance affordability programs (§ 600.330)
 7. Appeals (§ 600.335)
 8. Periodic renewal of BHP eligibility (§ 600.340)
 9. Eligibility verification (§ 600.345)
 10. Privacy and security of information (§ 600.350)
- E. Standard Health Plan
 1. Basis, scope and applicability (§ 600.400)
 2. Standard health plan coverage (§ 600.405)
 3. Competitive contracting process (§ 600.410)
 4. Contracting qualifications and requirements (§ 600.415)
 5. Enhanced availability of standard health plans (§ 600.420)
 6. Coordination with other insurance affordability programs (§ 600.425)
- F. Enrollee Financial Responsibilities
 1. Basis, scope and applicability (§ 600.500)
 2. Premiums (§ 600.505)
 3. Cost sharing (§ 600.510)
 4. Public schedule of enrollee premium and cost-sharing (§ 600.515)
 5. General cost-sharing protections (§ 600.520)
 6. Disenrollment procedures and consequences for nonpayment of premiums (§ 600.525)
- G. Payment to States
 1. Basis, scope and applicability (§ 600.600)
 2. BHP payment methodology (§ 600.605)
 3. Secretarial determination of BHP payment amount (§ 600.610)
 4. Deposit of federal BHP payment (§ 600.615)
- H. BHP Trust Fund
 1. Basis, scope and applicability (§ 600.700)
 2. BHP trust fund (§ 600.705)
 3. Fiscal policies and accountability (§ 600.710)
 4. Corrective action, restitution and disallowance of questioned BHP transactions (§ 600.715)
- IV. Collection of Information Requirements
- V. Response to Comments
- VI. Regulatory Impact Analysis

Acronyms

Because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing

these acronyms and their corresponding terms in alphabetical order below:

[the] Act Social Security Act
 Affordable Care Act The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152))
 APTC Advance Payments of the Premium Tax Credit
 BHP Basic Health Program
 CHIP Children’s Health Insurance Program
 CMS Centers for Medicare & Medicaid Services
 [the] Code Internal Revenue Code of 1986
 EHBs Essential Health Benefits
 FEHBP Federal Employees Health Benefits Program (5 U.S.C 8901, et seq.)
 FPL Federal poverty level
 HCERA Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted March 30, 2010)
 HHS [U.S. Department of] Health and Human Services
 IHS Indian Health Service
 MAGI Modified adjusted gross income
 PHS Act Public Health Service Act
 PRA Paperwork Reduction Act of 1995
 QHP Qualified Health Plan
 SHOP Small Business Health Options Program

I. Executive Summary

This proposed rule would implement section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111.152, enacted on March 30, 2010), which are collectively referred to as the Affordable Care Act. Section 1331 directs the Secretary to establish the Basic Health Program (BHP). In addition, this proposed rule would amend certain other federal regulations, clarifying their applicability to the new program.

Beginning in 2014, individuals and small businesses will be able to purchase private health insurance coverage through competitive marketplaces, also termed “Exchanges” (or the Health Insurance Marketplace). At the same time, states will have the opportunity to provide coverage under Medicaid for a broader range of low-income individuals. New administrative procedures discussed in prior rulemaking establishes a system for coordinating coverage across all insurance affordability programs. Beginning January 1, 2015, under this proposed rule, states will have an additional option to establish a Basic Health Program for certain low-income individuals who would otherwise be eligible to obtain coverage through the Exchange.

This proposed rule: (1) Establishes requirements for certification of state

submitted BHP Blueprints, and state administration of the BHP consistent with that Blueprint; (2) establishes eligibility and enrollment requirements for standard health plan coverage offered through the BHP; (3) establishes requirements for the benefits covered by such standard health plans; (4) provides for federal funding of certified state BHPs; (5) establishes the purposes for which states can use such federal funding; (6) sets forth parameters for enrollee financial participation; and (7) establishes requirements for state and federal administration and oversight of BHP funds. This issuance addresses everything that we believe to be essential to the establishment and operation of the BHP, with the specific exception of details on payment which will be issued separately. We continue to review existing regulations to identify areas for further development and coordination and we invite comment on additional areas that might be included.

II. Background

A. Introduction

Section 1331 of the Affordable Care Act provides states with a new coverage option, the Basic Health Program (BHP), for individuals who do not qualify for Medicaid but whose income does not exceed 200 percent of the federal poverty level (FPL). This proposed rule implements statutory provisions of the BHP and other provisions necessary to ensure coordination with the other coverage options that, along with BHP, are collectively referred to as “insurance affordability programs” (coverage obtained through an Exchange, Medicaid, and the Children’s Health Insurance Program, along with premium tax credits and cost sharing reductions). Coordination is necessary to ensure that consumers are determined eligible for the appropriate program through a streamlined and seamless process and are enrolled in appropriate coverage without unnecessary paperwork or delay. This proposed rule also describes standards for state administration and federal oversight of the BHP.

To maximize the coordination between BHP and other insurance affordability programs, rather than establish new and different rules for the BHP, we have proposed, when possible, to align BHP rules with existing rules governing coverage through the Exchange, Medicaid, or CHIP. This approach is supported by the statutory linkage between the minimum benefit coverage, maximum cost sharing, and overall funding for the BHP with the Exchange. It is also advisable in most instances to promote simplification and

coordination among programs. Where necessary to accommodate unique features of the BHP, we have adapted existing regulations or established specific rules for the new program. Recognizing that states may choose different ways to structure their BHP, when possible, we offer states flexibility in choosing to administer the program in accordance with Exchange rules or those governing Medicaid or CHIP. In those sections in which we propose to offer states the choice, states must adopt all of the standards in the referenced Medicaid or Exchange regulations.

B. Stakeholder Consultation and Input

HHS has consulted extensively with interested states and stakeholders on policies related to the BHP.

On September 14, 2011 (76 FR 56767), HHS published a Request for Information (RFI) inviting the public to provide input regarding the development of standards for the establishment and operation of a BHP. In particular, HHS asked states, tribal representatives, consumer advocates, and other interested stakeholders to comment on the general establishment of the BHP, standard health plan requirements and contracting process, the coordination between the BHP and other state programs, eligibility and enrollment, amount of payment, and Secretarial oversight. The comment period closed on October 31, 2011.

The public response to the RFI yielded comments from states, consumer advocacy organizations, health plans, and provider associations. The majority of the comments were related to the general administrative functions and standards for the BHP, the financial methodology used to determine a state's BHP payment amount, coordination between insurance affordability programs, benefit package, health plan selection and delivery systems, and the effect that the BHP may have on a state's Exchange.

The comments received are described, where applicable, in discussing specific regulatory proposals.

HHS also held a number of listening sessions with state representatives, consumer groups and health plans to gather input, and has directly engaged with interested states by establishing a "learning collaborative" to seek state input related to operations and coordination of the BHP with other insurance affordability programs. We considered input from these stakeholder meetings and responses to the RFI as we developed the policies in this proposed rule.

This proposed rule may be of interest to, and affect, American Indians/Alaska Natives. Therefore, we plan to consult with Tribes during the comment period and prior to publishing a final rule.

III. Provisions of the Proposed Rule

A. Scope and Definitions (§ 600.1 and § 600.5)

In § 600.1, we set forth the overall design of the BHP established under the authority of section 1331 of the Affordable Care Act. Generally, this provision authorizes federal funding for states that elect to operate an alternative program for eligible low-income individuals instead of offering such coverage through qualified health plans in the Exchange, if the Secretary certifies that the alternative program meets certain requirements. This proposed rule would implement that authority.

In proposed § 600.5, we set forth definitions for terms that are used throughout this part. Where a term used in this part has been defined in section 36B of the Internal Revenue Code (the Code) or in published regulations codifying the Affordable Care Act as related to operation of the Exchange, the Medicaid program and CHIP, we have adopted those definitions here consistent with the explicit statutory direction at section 1331(h) of the Affordable Care Act that terms used in section 36B of the Code shall have the same meaning under BHP. These definitions would incorporate interpretations, guidance and operating methodologies applicable under section 36B of the Code, to ensure a coordinated approach. Definitions for "Basic Health Program Blueprint," "program year," "certification," "enrollee," "standard health plan," and "standard health plan offeror" are created for the purpose of this proposed rule. We propose to define a regional compact to mean an agreement between two or more states to jointly procure and enter into contracts with standard health plans covering eligible individuals in those states.

We propose to adopt the definition of the "single streamlined application" used by both Medicaid and the Exchange, and found in 42 CFR 431.907(b)(1) of this chapter and 45 CFR 155.405(a) and (b).

We propose to adopt the Exchange definitions of "family and family size," "household income," "qualified health plan," "residency," and "modified adjusted gross income" in accordance with 26 CFR 1.36B-1. We are proposing to define "Minimum essential coverage" to have the meaning set forth in 26 CFR 1.5000A-2, including any coverage

recognized by the Secretary under 26 CFR 1.5000A-2(f). Under that authority, we are also proposing to recognize BHP coverage as minimum essential coverage, and would specifically include BHP coverage in our definition. It is our intention to clarify that BHP meets the requirements for the individual mandate, and, as such, we invite comment on the placement of this provision.

The proposed definition of "Indian" is the same as used in the Exchange for eligibility for cost-sharing reductions codified at 45CFR 155.300(a). This definition means any individual defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203), in accordance with section 1402(d)(1) of the Affordable Care Act. The definition of "lawfully present" found in 45 CFR 152.2 is also applied to BHP.

B. Establishment of a Basic Health Program

We propose adding subpart B consisting of § 600.100 through § 600.170 to specify the general requirements for certification of a state BHP. In this subpart, we propose required elements of the BHP Blueprint and procedures for development and submission of the BHP Blueprint. We would then require that states operate the BHP in accordance with a BHP Blueprint that has been certified by the Secretary. We also set forth certain overall principles for operation of the BHP. When possible, we have drawn on definitions and standards applied to other insurance affordability programs to promote state flexibility and reduce administrative burden.

1. Program description (§ 600.100)

Section 600.100 contains a general description of a state BHP that is operated in accordance with a BHP Blueprint certified by the Secretary to meet the requirements of this Part.

2. Basis, scope and applicability of subpart B (§ 600.105)

Proposed § 600.105 of subpart B specifies the general authority for and scope of standards proposed in part 600 that establish minimum requirements for the state option to operate a BHP.

3. Basic Health Program Blueprint (§ 600.110)

This section sets forth standards related to the content of a BHP Blueprint. We are proposing to adopt the construct of the Exchange blueprint for the BHP and are using the Blueprint as the mechanism by which the

Secretary will certify a state's proposed BHP and grant operational authority for the program. The Blueprint will include information necessary to establish compliance with many of the standards of the program. We further propose that the Blueprint be accompanied by a funding plan that identifies the funding sources, if any, beyond the BHP trust fund used to cover projected expenditures over a 12 month period. We recognize that it may be difficult to complete all sections of the Blueprint with certainty prior to finalizing contracts with standard health plan offerors or receiving notification of final funding amounts. Therefore, we intend to accept certain parts of the Blueprint in draft or proposed form, and provide states with a certification in principle, pending submission of final Blueprint provisions. We welcome comment on which aspects of the Blueprint will need to be submitted in draft or proposed form given the operational realities of program establishment.

Finally, we propose in this section that HHS will post submitted Blueprints on-line in the interest of public transparency.

4. Development and submission of a BHP Blueprint (§ 600.115)

We propose that the Governor or the Governor's designee must sign the state's Blueprint which must identify, by position or title, the agency and officials within that agency with responsibility for program operations, administration and finances.

In § 600.115 we propose to adopt the Exchange standard that a state must seek public comment on the BHP Blueprints, including significant revisions, before submission to the Secretary for certification. Unlike the Exchange process, which appears in statute, we have not proposed a specific list of stakeholders, with the exception of federally recognized tribes residing in the state, who must be addressed with public notification. We are extending flexibility to the state to contact stakeholders that may be affected. We welcome comment on any need to further require notification to particular interested parties.

5. Certification of a BHP Blueprint (§ 600.120)

We propose to have the date of signature by the Secretary be the effective date of certification, before which no payments may be made under this part. Once certified, we propose that Blueprints remain in effect unless revised by the state, terminated by the state, or the Secretary withdraws certification.

We propose standards for certification, which include sufficient information for the Secretary to establish compliance with the requirements of section 1331 of the Affordable Care Act and this Part, adequate planning for the integration of BHP with other insurance affordability programs, and sufficient planning to demonstrate operational readiness.

6. Revisions to a certified Blueprint (§ 600.125)

At § 600.125(a) we propose that a state wishing to make significant changes to the terms of its Blueprint must submit changes to the Secretary for review and certification. While not exhaustive, significant changes within this scope include changes that have a direct impact on the enrollee experience in BHP or the program financing.

7. Withdrawal of a BHP Blueprint prior to implementation (§ 600.130)

We propose in this section a process for withdrawing a BHP Blueprint, whether certified or not, as long as the state has not begun enrollment. If a state has begun enrollment, we consider the action a state would be taking as a program termination and the state would need to follow procedures as proposed in § 600.140.

8. Notice and timing of HHS action on a BHP Blueprint (§ 600.135)

We recognize that HHS has a responsibility to respond timely to a state requesting certification of a BHP Blueprint, or approval for revision of a certified Blueprint, to enable states to offer BHP as a part of the continuum of insurance affordability programs. We therefore propose at § 600.135(a) that HHS will act on all certification requests, including revisions, in a timely manner. We propose at § 600.135(b) that a state will receive a response from HHS to a complete certification request that includes information on impediments to approval.

9. State termination of a BHP (§ 600.140)

At § 600.140 we propose that for a certified program that is operational, or has begun enrollment, a state wishing to cease the operation of their BHP must follow specific termination procedures. We propose that a state must submit notification to the Secretary to terminate its BHP 120 days in advance of the planned termination date along with a transition plan. Proposed termination procedures also include written notice to participating standard health plan offerors and enrollees at least 90 days in advance, as well as other enrollee

protections to facilitate an orderly transition to other coverage without gaps in coverage. Section 600.140 further proposes that a state terminating its BHP will fulfill contractual obligations to standard health plans offerors, data reporting requirements to HHS, and the completion of any necessary financial reconciliation with the federal government. Notices to standard health plan offerors and enrollees must meet accessibility and readability standards set by the Exchange at § 155.230(b).

10. HHS Withdrawal of Certification and Termination of a BHP (§ 600.142)

We propose standards and conditions for a Secretarial finding that a BHP Blueprint no longer meets certification standards based on findings in an annual review, a program review conducted in accordance with proposed § 600.200, or from evidence of beneficiary harm, financial malfeasance or fraud. We propose that a state receive notice prior to withdrawal of certification and that all reasonable efforts are made to resolve the findings. Timing standards for notice to the state and eventual decertification are proposed. The effective date of an HHS determination withdrawing BHP certification is proposed as not earlier than 120 days following the finding of non-compliance.

11. State Program Administration and Program Operations (§ 600.145)

We propose at § 600.145(a) the requirements under which a state must operate its BHP.

At § 600.145(b) through (d), we propose certain principles to apply once a state has elected to implement a BHP. Specifically, the state must ensure that all persons have a right to apply, and if found eligible, to be enrolled into coverage that conforms to this part, and the state must operate the program statewide. The state would not be permitted to limit enrollment to a lower income level than prescribed in the statute, cap enrollment or impose waiting lists. These principles are set forth because individuals eligible for BHP in a state operating BHP are specifically excluded from receipt of the premium tax credit or cost-sharing reductions through the Exchange under section 1331(e)(2) of the Affordable Care Act and the establishment of a BHP must not leave individuals without an option for affordable coverage.

Additionally, at § 600.145(e) we propose a group of core operating functions that states must be able to perform to operate a BHP. These functions include making eligibility

determinations using the single streamlined application, processing appeals, contracting with standard health plan offerors, performing oversight and financial integrity functions, providing consumer assistance, extending essential protections to American Indians and Alaska Natives, ensuring civil rights protections, and collecting and reporting data necessary for program operations and oversight. Finally, terminating the program, if necessary, in accordance with proposed § 600.140 is also defined as a core operation. We solicit comment on whether these are, in fact, the core operating functions or whether there are other functions that should be recognized and considered essential to the successful establishment and operation of a BHP.

12. Enrollment Assistance and Information Requirements (§ 600.150)

Section 600.150(a)(1), (2), (3) and (4) set forth proposed requirements for the provision of information to consumers that is accessible and explanatory, aiding individuals' knowledge about the program, enrollment choices, and covered benefits, including additional benefits provided outside of standard health plan coverage, as well as other benefit options and limitations. This information should facilitate enrollment and participation in BHP. We are proposing that information provided to consumers by participating standard health plan offerors should be publically available, be clear and informative regarding premiums, covered services, and cost-sharing and should follow state specifications for format. We propose that such information be provided in a manner that complies with accessibility and readability standards of the Exchange. Further, we propose that states require participating standard health plan offerors to make current provider lists available.

13. Tribal Consultation (§ 600.155)

The BHP as proposed uses many Exchange concepts such as the development of a Blueprint to attain certification. Similarly, we extend in this rule many of the protections for American Indian/Alaska Native populations as are extended in the Exchange. To further this alignment, we propose in this section to use the tribal consultation agreements used by the state or federal Exchange for the BHP. We invite comment on this policy.

14. Basic Health Program Protections for American Indians and Alaska Natives (§ 600.160)

We propose that states adopt the same protections for American Indian and Alaska Native populations as they would receive in an Exchange. In § 600.160(a) we propose to apply the same special enrollment status for enrollment in standard health plans as established in 45 CFR 155.420, which permits Indians to enroll in Qualified Health Plans (QHPs) or change QHPs once per month. This status is independent of policies set by the state for open enrollment generally. We propose at § 600.160(b) that a state permit tribal organizations to pay premiums on behalf of enrolled individuals as is permitted in the Exchange at 45 CFR 155.240. At § 600.160(c) we propose that cost sharing may not be imposed on Indians to further align the Exchange's cost-sharing protections for Indians with household incomes at BHP levels. We also propose that BHP standard health plans must pay primary to Indian health programs for covered services; in other words, Indian health programs shall be the "payers of last resort" for services received through such programs that are covered by a standard health plan (with respect to the standard health plan).

15. Nondiscrimination standards (§ 600.165)

We propose that the BHP and standard health plans must comply with all applicable non-discrimination statutes and the nondiscrimination requirements applicable to the Exchange and recipients of federal assistance.

16. Annual report content and timing (§ 600.170)

In compliance with section 1331(f) of the Affordable Care Act, which substantially conforms to Exchange functions codified at 45 CFR 155.200(c) through (f), we propose at § 600.170(a) requirements for an annual report on the state's BHP. This report is both a mechanism to report state knowledge of any program fraud, waste or abuse, and to ensure compliance with eligibility verification requirements, the use of federal funds, and quality and performance standards. We continue to work towards aligning quality and performance expectations across all insurance affordability programs. We intend to issue additional guidance with respect to quality and performance standards, harmonizing the BHP to the maximum extent possible with requirements of QHPs in the Exchange, including quality ratings assigned under

section 1311(c)(3) of the Affordable Care Act and consumer satisfaction surveys under section 1311(c)(4) of the Affordable Care Act, which will also align with our efforts for Medicaid and CHIP. We invite public comment on this approach.

Finally, at § 600.170(b) we propose a timing standard for annual reports, due 60 days prior to the end of each operational year. The annual report confirms the appropriate use of federal funds, as well as key operational features, confirming that the release of federal funding for the subsequent year is appropriate.

C. Federal Program Administration

We propose to add subpart C consisting of § 600.200 to specify the provisions for federal program administration of the BHP. In adding this proposed subpart, we have drawn from the administrative standards established for the other health insurance affordability programs to promote program efficiencies.

1. Federal program reviews and audits (§ 600.200)

The proposed BHP review standards at § 600.200(a) and (b) specify that HHS may review state administration of the BHP, as needed, but no less frequently than annually, to determine whether the state is complying with the federal requirements and provisions of its BHP Blueprint. We provide that the federal compliance review may either be based on the state's annual report, or on a separate direct federal review. We anticipate that separate federal reviews will generally be conducted only when there is a specific federal concern about program compliance. We then provide a protocol for identifying and resolving compliance concerns, providing opportunities for the state to substantiate compliance or develop corrective actions to address compliance. We also set forth a protocol for raising and resolving concerns about the improper use of BHP trust fund resources. Finally, the proposed audit standards in § 600.200(c) provide that the HHS Office of Inspector General (OIG) may periodically audit state operations and standard health plan practices consistent with the purpose and processes applied in Medicaid, as described in § 430.33(a).

D. Eligibility and Enrollment

As with other sections of this proposed rule, subpart D, which consists of § 600.300 through § 600.350, adopts eligibility and enrollment provisions from other insurance affordability programs wherever

possible. We have done this to prevent gaps in coverage, promote simplicity and continuity for consumers if they move from one insurance affordability program to another, or have family members eligible for different programs, to simplify program administration, promote reuse of administrative processes and infrastructure, and promote administrative simplification for states. In some instances we have adopted, with modification, standards from other insurance affordability programs or are proposing new rules to fit the eligibility and enrollment provisions of the BHP.

1. Basis, scope and applicability (§ 600.300)

Section 600.300 of subpart D specifies the general authority for and scope of standards proposed in this subpart that establishes eligibility requirements for the BHP.

2. Eligible individuals (§ 600.305)

We propose to implement the eligibility standards for the BHP in accordance with sections 1331(e)(1) and (e)(2) of the Affordable Care Act. Because BHP provides coverage in lieu of coverage through the Exchange that is supported by advanced payment of premium tax credits (APTC) and cost sharing reductions (CSR), we have adopted many of the eligibility rules used to determine eligibility for APTC and CSR in the Exchange and applied them to BHP. In some circumstances, particularly around eligibility processes, we propose to adopt Medicaid or CHIP rules, or to offer a state the option to apply either Exchange or Medicaid/CHIP rules. Where a state is given choice between applying Exchange standards or Medicaid standards, it is our intention that it chooses all the standards of Medicaid or the Exchange within one particular area.

At § 600.305(a) we propose to codify the eligibility requirements established in section 1331(e)(1) of the Affordable Care Act. With narrow exceptions, as reflected in the regulation text, individuals eligible for BHP would be eligible for premium tax credit support to enroll in a QHP in the Exchange if the state did not offer a BHP.

In situations in which an individual is enrolled in both limited-benefits Medicaid (because the Medicaid coverage does not meet the definition of minimum essential coverage (MEC) or because it does not include the 10 essential health benefits) and in the BHP, standard coordination of benefits rules set forth in § 433.139(b)(1) of the Medicaid regulations would apply, with

Medicaid serving as the secondary payer.

3. Application (§ 600.310)

The Affordable Care Act requires the use of a single, streamlined application, developed by the Secretary, for all insurance affordability programs. We propose to codify at § 600.310 this requirement for BHP by adopting by reference the regulations at § 431.907(b)(1) and 45 CFR 155.405(a) and (b). We further propose to adopt the Medicaid rule relating to an individual's opportunity to apply without delay (§ 435.906) and for assistance with an application at § 435.908. We note that call centers required of the Exchange (§ 155.205(a)) are encouraged to provide information on all insurance affordability programs.

The state may permit the use of authorized representatives to assist individuals with their applications or renewal of eligibility. If the state permits authorized representatives we propose that they follow the standards of either the Exchange (§ 155.227) or Medicaid (§ 435.923).

4. Certified Application Counselors (600.315)

Some individuals may need assistance with completing applications, enrolling in coverage, or with ongoing communications once determined eligible. State Medicaid and CHIP agencies have long allowed beneficiaries to use application counselors to promote enrollment and assist with application preparation, and current regulations at § 435.908 provides for states to certify Medicaid application counselors to ensure that they are properly trained in applicable rules and requirements. Similarly, 45 CFR 155.225 provides for Exchanges to certify application counselors to help individuals apply for enrollment in QHPs. We propose at § 600.315 to give a state the option to certify application counselors to assist individuals in applying for enrollment in BHP, and to adopt the standards for a certification program found in either § 155.225 (relating to the Exchange) or § 435.908 (relating to Medicaid/CHIP). We expect the state to adopt all of either the Exchange of Medicaid standards.

5. Determination of eligibility for and enrollment in a BHP (§ 600.320)

At § 600.320(a) we propose to allow BHPs to determine eligibility directly or to have eligibility determined by any governmental entity that determines eligibility for Medicaid, or the Exchange.

At § 600.320(b) we propose that the state adopt standards to conform with § 435.912, similar to both Medicaid and CHIP, regarding the timeliness of eligibility determinations.

At § 600.320(c) we propose that the state determine the effective date for eligibility using the method in place for either the Exchange or Medicaid.

Finally, at § 600.320(d), we propose that the state choose between the enrollment policies of the Exchange or the continuous enrollment of Medicaid. If choosing the Exchange enrollment policies, the state must adopt open and special enrollment periods equivalent to those specified for the Exchange at 45 CFR 155.410 and § 155.420 to minimize gaps in coverage for eligible individuals. Specifically, consistent with the Exchange provisions at 45 CFR 155.420(d), we propose to require the state to allow eligible individuals to enroll in BHP outside of the annual open enrollment period if, for example, they experience a triggering event including: the loss of minimum essential coverage; gaining a dependent or becoming a dependent; gaining status as a citizen, national or as lawfully present when previously he/she did not have such status; or making a permanent move. Additionally, Indians are provided one special enrollment per month.

6. Coordination with other Insurance Affordability Programs (§ 600.330)

We propose standards of coordination between insurance affordability programs in accordance with section 1331(c)(4) of the Affordable Care Act by adopting applicable provisions of 45 CFR 155.345(a) and incorporating § 435.1200 which pertain to coordination options and responsibilities for the Exchange and Medicaid respectively. Under existing regulations, Medicaid and CHIP agencies may make final Medicaid and CHIP eligibility determinations based on the BHP's assessment; or the state Medicaid or CHIP agency may accept a final eligibility determination made by a BHP that uses state Medicaid and CHIP eligibility rules and standards. Further, the Exchange may contract eligibility determinations to eligible entities. We propose to adapt the provisions of § 435.1200(c) through (e) to BHP to reflect this flexibility and to establish the standards and guidelines to ensure a simple, coordinated and timely eligibility determination process and accurate eligibility determinations regardless of the option elected by the state.

Specifically, we propose to require an agreement between the Medicaid/CHIP

agency, the Exchange, and the BHP, that includes the same elements as those required in § 155.345(a) and § 435.1200(b)(3), to include a delineation of the responsibilities of each agency to minimize burden on individuals, as well as to ensure timely determinations of eligibility and enrollment in the appropriate program.

Because all insurance affordability programs will be collecting the same information, the state will have the information necessary to evaluate MAGI based eligibility across programs. We propose to require that the state operate in full compliance with 45 CFR 155.345(a) and (h) regarding agreements with the Exchange, Medicaid and CHIP agencies, as well as the secure exchange of information including electronic account transfers.

Similarly, we propose to require the BHP agency to notify any referring agency of final eligibility determinations in accordance with § 600.330.

An effective notification process is important to ensure a high quality consumer experience and a coordinated eligibility and enrollment system as provided under section 1413 of the Affordable Care Act and section 1943 of the Act. We propose to adopt the standards for notices, in accordance with § 435.913 and § 155.230, and the requirement for electronic notices in § 435.918 for the BHP. Consistent with the provisions of the Affordable Care Act for a coordinated system across insurance affordability programs, we further propose to adopt the provisions for coordinated and combined notices at § 435.1200.

7. Appeals (§ 600.335)

Eligibility for BHP is largely based upon eligibility for participation in the Exchange, within applicable income limits. As such, many of the eligibility processes for BHP will be substantially the same as those for the Exchange. We propose that individuals will have an opportunity to appeal BHP eligibility determinations but that opportunity cannot be modeled on the Exchange appeal process because a core component of the Exchange appeals process is the federal level appeal. There is no independent authority for a federal level appeals process for BHP like the federal level appeal for the Exchange. Therefore, we propose that the state use the Medicaid appeals process for BHP, under an agreement with the Medicaid program. We appreciate that some state Medicaid programs may choose to delegate Medicaid appeals to the Exchange. In these states, there will not be complete alignment between appeals processes

for Medicaid and BHP, since BHP appeals will not be inclusive of the federal process. We invite comment on this proposal.

8. Periodic Renewal of BHP eligibility (§ 600.340)

Consistent with the Exchange, Medicaid and CHIP, we propose at § 600.340(b) that the state shall re-determine an individual's eligibility every 12 months. If a state has chosen to match the Exchange policies on enrollment at § 600.320(d), the redetermination process will occur as part of the annual open enrollment. If the state has chosen the 12 month renewal process of Medicaid, the redetermination process will occur 12 months from the initial determination. Consistent with the rules established for the Exchange, we propose to adopt the Exchange provisions at 45 CFR 155.330(b) that the state require enrollees to report changes that could affect eligibility within 30 days, and must redetermine eligibility based on verified information received, or updated information from data sources.

For purposes of encouraging continuity of care, we have also proposed that, if an enrollee remains eligible at annual redetermination, the state must maintain the individual's enrollment in the current standard health plan under BHP unless the individual affirmatively takes action to choose a different standard health plan.

9. Eligibility verification (§ 600.345)

We propose that the state establish verification plans that are practical for all agencies determining eligibility for BHP. We propose to give the state the option to apply to BHP the same eligibility verification processes used by either the Exchange at 45 CFR 155.315 and 320 or the Medicaid agency at § 435.945 through § 435.956.

Regardless of which approach is chosen, the verification process must include verification of citizenship and lawfully present status. Self-attestation is not an acceptable verification method for citizenship and immigration status. The state may choose to verify additional factors and adopt reasonable verification procedures, and specify those factors for which self-attestation will be accepted.

10. Privacy and security of information (§ 600.350)

The state must comply with all requirements on the use and disclosure of personally identifiable information in operating BHP that are applicable to the operation of an Exchange. We propose to apply to the BHP 45 CFR 155.260(b)

which sets limits on the use and disclosure of personally identifiable information. We also propose to apply § 155.260(c), which clarifies that data sharing agreements made between BHP and other agencies must comply with other applicable law including section 1942 of the Act.

E. Standard Health Plan

We propose to add subpart E consisting of § 600.400 through § 600.425 to specify the standard health plan coverage and the delivery of such coverage.

Section 1331(b) of the Affordable Care Act provides that a standard health plan is a benefits plan which, at a minimum, provides essential health benefits described in section 1302(b) of the Affordable Care Act to BHP enrollees and, if offered by a health insurance issuer, has a medical loss ratio of at least 85 percent. Standard health plan offerors, as provided for in section 1331(g) of the Affordable Care Act, may include a licensed health maintenance organization, a licensed health insurance insurer, or a network of health providers.

Section 1331(c) of the Affordable Care Act provides for the establishment of a competitive process for the state to contract with standard health plan offerors to provide standard health plan coverage. The statute requires that the competitive process include the selection of standard health plans, the negotiation of premiums, cost sharing and benefits, as well as the consideration of innovative features such as care coordination and incentives to encourage the use of preventive services and appropriate utilization of health care services. The competitive process must also take into account the health and resource differences of the BHP population and participating providers, techniques to manage service utilization, establishment of performance measures, enhancement of standard health plan availability to BHP enrollees and coordination with other insurance affordability programs.

While much that is proposed in this subpart is new, given the need to set forth parameters in the establishment of a new program, we have adopted, where appropriate, existing Exchange or Medicaid standards consistent with our goal to create coordination across all insurance affordability programs, promote efficiencies and reduce administrative costs. This includes adopting the Exchange's coverage standards and protections at proposed § 600.405. In light of the specific statutory requirement for a competitive

procurement process, we propose to require that the state adopt contracting processes consistent with the procurement standards and competition requirements set forth in 45 CFR 92.36(b) through (i). We have further adapted standards from the Exchange and Medicaid with respect to the contract requirements that apply when the state contracts for the provision of standard health plans.

1. Basis, scope and applicability (§ 600.400)

Proposed § 600.400(a) specifies the statutory basis, scope, and applicability for the provisions regarding the minimum coverage standards included in BHP's standard health plans as well as the delivery of such coverage, the competitive contracting process and contract requirements the state must use when contracting for the provision of standard health plans, and other applicable requirements to enhance the availability of standard health plan coverage.

2. Standard health plan coverage (§ 600.405)

We propose in this section to align the minimum benefit BHP standard with 45 CFR 156.110 and 45 CFR 156.122 regarding prescription drug coverage, which defines the EHBs for the Exchange and includes any subsequent changes resulting from periodic reviews by the Secretary specified in 1302(b)(4)(G) and (H) of the Affordable Care Act. As required by statute, the minimum benefit standard must include at least the ten general EHB categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services including oral and vision care. Provision of essential health benefits means that the standard health plan coverage provided by the BHP will not include any limitations on coverage that are not substantially equal to the EHB-benchmark or reference plan. Nothing in this proposed rule should be interpreted to preclude a state from offering additional benefits within the state's standard health plan or in addition to the state's standard health plan.

Additionally, section 1302(b)(4) of the Affordable Care Act requires that benefit design or implementation of benefit design cannot discriminate "on the basis of an individual's age, expected

length of life, or of an individual's present or predicted disability, degree of medical dependency, or quality of life or other health conditions." We further propose to implement this section by adopting the coverage protections set forth at 45 CFR 156.125, applicable to the Exchange.

Within the construct of the required coverage of essential health benefits, there is no requirement in BHP that all enrollees receive the same or comparable benefits (known in Medicaid as the comparability requirement). States may have reason to provide specialized standard health plans to targeted populations to the extent that the targeting criteria are not based on pre-existing conditions or health status-related factors, and the proposed regulation offers states that option. We are also proposing to adopt the Exchange's substitution and supplementation of coverage standards described at 45 CFR 156.115(b) and 45 CFR 156.110(b)(1) for the BHP. Additionally, we are proposing to adopt the Medicaid model permitting the selection of more than one option for establishing essential health benefits using a base benchmark or reference plan. We are proposing these policies, in combination, to provide states flexibility in benefit definition and configuration, while assuring that all standard health plans cover all ten essential health benefits, as well as other benefits based on the state's selected base benchmark plan.

The intent of the reference plan is to reflect both the scope of services and limits offered by a typical employer plan in the state and set a reference or benchmark by which to measure the provision of substantially equal benefits. The permitted reference, or base benchmark plans as defined in 45 CFR 156.100(a)(1) through (4) are: the largest plan by enrollment in any of the three largest small group insurance products in the state's small group insurance market as defined in 45 CFR 155.20; any of the largest three state employee health benefit plans by enrollment; any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by enrollment that are open to federal employees; or the largest insured commercial non-Medicaid HMO operating in the state. By permitting states to choose more than one base benchmark or reference plan in combination with substitution of benefits we are proposing to provide states flexibility to achieve similar plan structures as under alternative benefit plan structures in Medicaid. Substitution of benefits does not preclude states from drawing benefits

from the Medicaid state plan to meet the EHB benchmark benefit package as long as they are actuarially equivalent and in the same EHB category, with the exception of prescription drugs for which substitution is not permitted.

Plans providing essential health benefits in BHP must meet all the requirements in 45 CFR 156.115(a) defining substantially equal, prohibiting the exclusion of individuals from coverage in any benefit category, and complying with all the specific requirements for the provision of prescription drugs, mental health, substance abuse, preventive health services, and habilitative services.

In addition to the essential health benefits described in detail previously, we propose to set forth conditions applicable when the standard health plan is subject to state insurance mandates requiring additional benefits. (This is not the same as a state choosing to add additional benefits only to its standard health plan(s).) We propose that the state adopt the determination of the Exchange at 45 CFR 155.170(a)(3) in deciding which benefits, enacted after December 31, 2011, are in addition to the EHBs and are, therefore, outside of the reference premium structure that will be used to determine the amount of the premium tax credit and cost sharing reductions forming the basis for federal payments to states. Payment for these benefits would come from either state funds or trust fund surplus.

Finally, section 1303 of the Affordable Care Act sets forth special rules relating to coverage of abortion services and the segregation of funding for those services. Abortion services are prohibited from inclusion as essential health benefits and federal funding for abortion services, except in the case of endangerment of the woman's life, rape or incest, is prohibited. If states provide abortion services for which public funding is prohibited, the state is not eligible for any federal contribution, and payments for those services must be kept in separate allocation accounts.

3. Competitive contracting process (§ 600.410)

The competitive contracting process is a unique feature to BHP, and while we have aligned, to the greatest extent possible, with existing standards for the Exchange, Medicaid, and CHIP, this section also proposes new standards specific to BHP consistent with the statute. To receive HHS certification, we propose that the state assure in its BHP Blueprint that it follows a competitive contracting process that includes a negotiation of the elements described in § 600.410(d) as well as consideration of

the elements described in § 600.410(e). We are interpreting the requirement for a competitive process to permit any state procedures that are consistent with the standards set out in section 45 CFR 92.36(b) through (i). These standards provide a state considerable flexibility in how they solicit bids, how bids are evaluated, and how contracts are awarded, while ensuring that the competition will be open and free of unnecessary restrictions. While we understand that a state may be interested in joint procurements for BHP and other programs (such as Medicaid or other state health programs), the state must ensure that such a joint procurement meets the highest standards for competition of any of the involved programs, involves negotiation of at least the elements required under the BHP statute, does not unnecessarily restrict competition, and ensures that there is no cross-subsidization of costs between programs. We invite comments on this approach as we are interested in ensuring both state flexibility and free and open competition for the provision of standard health plans.

In § 600.410(c), we propose exceptions to the initial implementation of a competitive contracting process in the event that the state is unable to implement such a process for program year 2015. The proposed exceptions are subject to HHS approval during the certification process as proposed in § 600.120. We are seeking comment on this provision as we anticipate that a state may be interested in leveraging existing Medicaid managed care contracts to ensure an efficient and quick implementation of BHP effective January 1, 2015. As these contracts may not have been procured consistent with the procedures proposed in this section, we have proposed this exception to help promote coordination and continuity of care during the initial implementation of BHP in 2015.

We have proposed in § 600.410(d) three elements specified in the statute that a state must negotiate during its competitive contracting process. In addition to proposing the negotiation of premiums, cost sharing and benefits, we propose that a state ensure the inclusion of innovative features in the negotiation process, such as care coordination, case management, the use of incentives to promote preventive services and encourage enrollee involvement in health care decision making, such as the ability for enrollees to select their providers. We further propose in paragraph (e) of this section that a state also include in its competitive process the consideration of health and resources differences of enrollees and

health care providers. We also proposed in paragraph (e) that a state also include in its competitive process the use of managed care, or a similar process to improve the quality, accessibility, appropriate utilization, and efficiency costs and prices of services provided to enrollees as well as measures to prevent, identify theft, and address fraud, waste and abuse and ensure consumer protections. We share the goal of states to focus on improving the quality of care and health outcomes, and as such, have proposed that the state consider specific measures and standards that focus on these important objectives as well as consider how to coordinate with other health insurance affordability programs. We seek comment on the specific measures to consider and include in the final rule. Specifically, we are considering the use of measures that ensure enrollee protection, such as tracking and monitoring grievance and claims appeals while, at the same time, balancing our goals of state flexibility and effective contracting. Finally, in paragraph (f) of this section, we propose that nothing in this competitive process shall permit or encourage discrimination in enrollment based on pre-existing conditions or other health status-related factors.

4. Contracting qualifications and requirements (§ 600.415)

In § 600.415(a), we propose the criteria by which an offeror is eligible to contract with a state for the administration and provision of one or more standard health plans under BHP. In addition to the criteria specified in statute, we propose that an eligible offeror also include a non-licensed health maintenance organization to the extent that the offeror participates in Medicaid or CHIP.

The proposed eligible offeror criteria include a network of health care providers with the capacity to administer and provide standard health plan coverage. We do not anticipate that individual providers would be eligible to administer and provide a standard health plan. A network of providers, such as an independent physician association, or a large health system that provides, for example, both inpatient and outpatient health care services, or an accountable care organization, is necessary to not only deliver the coverage specified under the program but also to provide care coordination and case management as required by statute.

Finally, we have proposed including a non-licensed health maintenance organization that participates in Medicaid or CHIP to provide the state

with the flexibility to contract with Medicaid or CHIP managed care organizations that may not meet the requirements of a qualified health plan on the Exchange. We believe providing such flexibility furthers the objective of the program by encouraging continuity of care for BHP enrollees, who may frequently enroll and disenroll between the state's Medicaid program and BHP. We believe that the proposed requirements assure that non-licensed standard health plan offerors have the capacity to deliver high quality care to enrollees in a manner that is consistent with Medicaid standards; however, we invite comments on this approach.

During the October 2011 RFI process, we received several comments regarding the use of managed care under BHP, and whether a state must contract with managed care organizations for the provision of standard health plans. While the statute directs that the state contract for the provision of a standard health plan under BHP, it does not restrict the state's option to contract with qualified health plans operating in the Exchange or with Medicaid managed care organizations. We believe the statute also provides a state with the flexibility to operate its BHP under an integrated care model as the state has the option to contract with a network of providers to provide a standard health plan to enrollees to the extent that the network of providers meet the elements specified in statute.

With respect to the specific contract requirements for a standard health plan, we propose requiring that the state establish specific contract provisions that are unique to its BHP and applicable state laws to the extent needed to address network adequacy, service provision and authorization, quality and performance, enrollment procedures, disenrollment procedures, noticing, provisions protecting the privacy and security of personally identifiable information, and other applicable contract requirements as determined by the Secretary. We anticipate providing future guidance that will further describe the minimum contract requirements needed for HHS certification of a state's BHP; however, at this time, we will apply a "safe harbor" approach to a state incorporating the contract requirements from either 45 CFR part 156 (the Exchange's qualified health plan requirements) or 42 CFR part 438 (Medicaid managed care requirements). This "safe harbor" approach means that a state modeling its contract requirements off of the Exchange or Medicaid will meet the contract requirements for purposes of HHS

certification unless and until the next contract cycle after HHS issues additional guidance. We believe that the contract requirements under the Exchange and Medicaid assure the provision of high quality care while maintaining sufficient consumer protections; however, we invite comments on this approach to determine whether it accomplishes the objectives of promoting program efficiencies and promoting administrative simplicity.

We further propose that a state include in its standard health plan contracts provisions that define a sound and complete procurement contract, as required by 45 CFR part 92(i), which is consistent with existing federal procurement guidance. Also under paragraph (b), we propose that contracts with standard health plans that provide health insurance coverage offered by a health insurance issuer must comply with the requirement at section 1331(b)(3) of the Affordable Care Act for a medical loss ratio of at least 85 percent. Finally, the state must, as proposed at § 600.415(c), include in its BHP Blueprint the standard set of contract requirements that will be incorporated into its standard health plan contracts in order to receive HHS certification.

5. Enhanced availability of Standard Health Plans (§ 600.420)

Section 1331(c)(3)(A) of the Affordable Care Act specifies that, to the maximum extent feasible, a state should seek to make multiple standard health plans available to individuals to ensure choice of standard health plans. While we recognize the number of standard health plans may not equal the number of QHPs offered in the Exchange, we believe that BHP applicants and enrollees should have not only choice of standard health plans, but also a similar experience to consumers purchasing coverage in the Exchange, including the ability to compare the benefits packages, premiums, cost-sharing charges, etc. between the available health plans (this includes different standard health plans offered by the same standard health plan offeror). In order to ensure that BHP applicants and enrollees are afforded the opportunity to compare available standard health plans, we believe that a state must ensure that there are at least two standard health plans offered under the program. In addition to ensuring a similar coverage purchasing experience for BHP enrollees, we believe that offering at least two standard health plans will ensure there is always one standard health plan available in the event that

the availability of the second standard health plan is affected. We understand that while choice of health plan may not always occur in Medicaid, BHP, unlike Medicaid, does not have a fee-for-service program available in the event that a single standard health plan suddenly becomes unavailable. We invite comment on the proposal to assure that at least two standard health plans are offered under the program.

A state has the option, as defined in section 1331(c)(3)(B) of the Affordable Care Act, to enter into a regional compact with other states for the joint procurement of standard health plans. As this is a new option afforded to states operating a BHP, we propose in § 600.420 that a state may enter into a regional compact to provide standard health plans statewide, or in geographically specific areas within the states. If the state contracts for the provision of a geographically specific standard health plan, the state must assure in its BHP Blueprint that enrollees, regardless of residency within the State, continue to have choice of at least two standard health plans. The state must include in its BHP Blueprint which state(s) will participate in the regional compact; the specific areas within the participating states in which the standard health plans will operate, if applicable; an assurance that the competitive contracting process used in the joint procurement complies with proposed § 600.410; and any variations in benefits, premiums and/or cost sharing that may result due to regional differences within the participating states. A state operating a geographically specific standard health plan under a regional compact must still operate a BHP statewide.

6. Coordination with other Insurance Affordability Programs (§ 600.425)

Due to income or household composition changes that may occur, coverage for some individuals will shift from BHP to the Exchange, Medicaid or CHIP coverage during open enrollment or in special enrollment periods during the year as well as possible shifts of coverage for some individuals from those other programs to BHP. Section 1331(c)(4) of the Affordable Care Act requires that BHP coordinate with Medicaid, CHIP, the Exchange and any other state-administered health insurance program. This coordination is important not only for eligibility and enrollment, but also with respect to the provision of health care benefits as enrollees transition in or out of BHP. Our goal is to ensure that enrollees do not experience a disruption in care and that coordination exists between all

insurance affordability programs to promote continuity of care. As such, we are proposing in § 600.425 that a state describe such coordination to prevent disruptions in care for transitioning enrollees. Examples of how a state can ensure coordination across the insurance affordability programs include, but are not limited to, describing how the state will:

(1) Ensure that individuals who are undergoing an ongoing course of treatment can continue receiving such treatment and have access to their provider(s) through the duration of their prescribed treatment (or, as appropriate, until a transition can be made without disruption, inconvenience or burden for the enrollee);

(2) Promote the sharing of data through the use of health information technology;

(3) Promote access to the same providers and services through BHP available through other insurance affordability programs, through coordinated provider enrollment procedures, coordinated coverage procurement procedures, or similar coverage definitions and protocols; and

(4) Use auto-enrollment protocols in BHP, Medicaid and CHIP that seek to maximize continuity with a provider.

F. Enrollee Financial Responsibilities

We propose adding subpart F consisting of § 600.500 through 600.525 to specify the monthly premium and cost-sharing standards applicable to BHP.

1. Basis, scope and applicability (§ 600.500)

Section 1331(a)(2)(A)(i) of the Affordable Care Act permits a state operating a BHP to collect monthly premiums to the extent that they do not exceed the amount of the monthly premium that the enrollee would have been required to pay if he or she had enrolled in the applicable second lowest cost silver plan, as defined in section 36B(b)(3)(B) of the Code, offered to the individual through an Exchange. The amount of the required monthly premium, either under BHP or under the applicable second lowest cost silver plan, will be determined after accounting for any premium tax credit and cost-sharing reduction.

Section 1331(a)(2)(A)(ii) of the Affordable Care Act limits cost sharing for BHP enrollees with incomes at or below 150 percent of the FPL to the amount required under a platinum plan and for BHP enrollees with incomes above 150 percent of the FPL, the amount required under a gold plan.

At § 600.520, we propose to adopt three cost-sharing provisions that are directly based on Exchange requirements related to cost-sharing protections for preventive health services, Indians, and the cost-sharing standards in QHPs that enroll consumers with similar incomes as BHP enrollees. Finally, at § 600.525, we propose disenrollment procedures and consequences for nonpayment of premiums.

2. Premiums (§ 600.505)

As discussed previously, the statute requires that a BHP enrollee's monthly premium not exceed the monthly premium the individual would have paid had he or she enrolled in a plan with a premium equal to the premium of the applicable benchmark plan, as defined in 26 CFR 1.36B-3(f). In § 600.505(a), we propose that a state assure in its BHP Blueprint that the BHP monthly premium does not exceed what an otherwise qualified enrollee would receive through the Exchange. The state must also assure that when determining the amount of the enrollee's monthly premium, it took into account reductions for the premium tax credit that would otherwise be available to the enrollee. As currently proposed, we are not requiring that the state assure that it accounted for the cost-sharing reduction when determining the enrollee's monthly premium as it is already assumed in the actuarial values of the applicable standard health plan. We further propose in this section that the state include in its BHP Blueprint the proposed enrollee monthly premium amounts for each group or groups of enrollees subject to the applicable premiums, the collection method and procedure for an enrollee to make his or her premium payment, and the consequences for nonpayment of premium.

3. Cost sharing (§ 600.510)

We propose that the state include in its BHP Blueprint the group or groups of enrollees subject to cost sharing, and to assure that cost-sharing standards, including the establishment of an effective system to ensure compliance, are in accordance with § 600.520.

We propose to adopt at § 600.510(b) the Exchange's approach (which is also consistent with Medicaid's approach) to cost sharing for preventive health services as described at 45 CFR 147.130 and 45 CFR 155.115(a)(4). These provisions establish that preventive services without cost sharing are a required element of the provision of essential health benefits. By cross referencing to these provisions, we

propose to incorporate the same prohibition on the imposition of copayments, deductibles, coinsurance or other forms of cost sharing with respect to recommended preventive health services or items in BHP that applies to the provision of essential health benefits in other insurance affordability programs and in the overall marketplace. We believe that this approach is both required by the statutory provision that standard health plans offer essential health benefits, and also accomplishes the goal of not exceeding the cost sharing that would have otherwise occurred if the individual had been enrolled on the Exchange. Furthermore, this policy promotes consistent treatment and continuity of care for consumers who may move between BHP, the Exchange and Medicaid in a given coverage year.

4. Public schedule of enrollee premiums and cost sharing (§ 600.515)

Under § 600.515(a), we propose that the state must ensure that applicants and enrollees have access to information concerning premiums and cost-sharing amounts for a specific item or service under a standard health plan that would apply for individuals at different income levels. We propose to align with the Exchange's minimum standard of publishing such information through an Internet Web site as well as through other means for individuals who do not have Internet access. In addition to the publication of the premiums and cost-sharing amounts, we propose that the state make publicly available information regarding the nonpayment of premiums. Under paragraph (b), we propose that the premium and cost sharing information must be made available to applicants for standard health plan coverage and for enrollees in such coverage at time of enrollment, re-enrollment, determination of eligibility, when premium and/or cost-sharing amounts change, and upon request by the individual. We believe that applying similar transparency standards utilized in the Exchange (and consistent with Medicaid and CHIP) will ensure efficiencies between insurance affordability programs as well as provide a more seamless experience for consumers who may transition out of, or into, the BHP.

5. General cost-sharing protections (§ 600.520)

We propose at § 600.520(a) to adopt similar cost-sharing protections for lower income enrollees that currently apply in CHIP at § 457.530 and the Exchange at 45 CFR 156.420(e). In both insurance affordability programs,

premiums and cost sharing may vary to the extent that they do not favor enrollees with higher incomes over those with lower incomes. At proposed § 600.520(b), we have adopted the Exchange standards set forth at 45 CFR 156.420(b)(1) and (d) regarding the cost-sharing protections applied to Indians, which are also consistent with the rules in Medicaid and CHIP. Specifically, states will not be permitted to impose cost sharing on Indians enrolled in BHP for essential health benefits. We believe that these protections are legally required to ensure that this population does not experience higher cost sharing than what would otherwise have been required had they enrolled on the Exchange.

As noted previously, section 1331(a)(2)(A)(ii) of the Affordable Care Act provides that the cost sharing required for individuals under 150 percent of the FPL not exceed what is required under a platinum plan offered through the Exchange. Similarly, the statute specifies that the cost sharing required for individuals above 150 percent of the FPL not exceed what is required under a gold plan offered through the Exchange. We received many comments on this particular section of the statute during our October 2011 request for information. Specifically, we received questions regarding the actuarial value of the platinum and gold plans HHS would use to align BHP's on cost-sharing reduction standards. Actuarial value is a measure of the percentage of expected health care costs a health plan will cover, and can be considered a general summary measure of health plan generosity. Section 1302(d)(2) of the Affordable Care Act defines actuarial value relative to coverage of the EHB for a standard population, and is generally calculated by computing the ratio of the total expected payments by the plan for EHB over the total costs for the EHB the standard population is expected to incur. For example, a plan with an 80 percent actuarial value would be expected to pay, on average, 80 percent of a standard population's expected medical expenses for the EHB. The individuals covered by the plan would be expected to pay, on average, the remaining 20 percent of the expected expenses in the form of deductibles, copayments, and coinsurance.

We considered two options to ensure that BHP enrollees do not experience higher cost sharing when enrolled in BHP relative to what they would have experienced had they been enrolled through the Exchange. The first option we considered required BHP plans to meet the same actuarial value standards

applicable to Exchange plans for this population pursuant to the revisions made by section 1001(b)(1)(A) of HCERA to section 1402(c)(2)(B) of the Affordable Care Act. The second option would be based on a comparison of the BHP plan to a selected model gold or platinum plan available under the Exchange. Under the first option, required cost sharing, on average, would not be more than 6 percent of the cost of coverage for the lowest income BHP population, and not more than 13 percent of the cost of coverage for other BHP enrollees. Under the second option, required cost sharing could exceed such levels but could not exceed the levels that would be required under the model Exchange plans.

In our proposed rule, we have elected the first option as we have interpreted the revisions made by section 1001(b)(1)(A) of HCERA to the actuarial values described in section 1402(c)(2)(B) of the Affordable Care Act to apply to the applicable populations enrolled in BHP; therefore, proposed § 600.520(c) adopts the cost-sharing standards set forth at 45 CFR 156.420(a)(1) and (2), (c) and (e). As proposed at § 600.520(c), the cost-sharing standard for non-Indian enrollees with income below 150 percent of the FPL cannot exceed what is required under a platinum plan with an actuarial value of 94 percent. The cost-sharing standard for non-Indian enrollees with incomes above 150 percent of the FPL cannot exceed what is required under a gold plan with an actuarial value of 87 percent. By incorporating the Exchange cost-sharing standards at 45 CFR 156.420(a)(1) and (2), the out-of-pocket cost-sharing maximums also apply to individuals enrolled in BHP. We invite comment on our proposed approach.

6. Disenrollment Procedures and Consequences for Nonpayment of Premiums (§ 600.525)

We propose in paragraph (a)(1) of this section that a state assure compliance with the disenrollment procedures for nonpayment of premiums set forth at 45 CFR 155.430. At paragraph (a)(2), we propose that a state aligning its enrollment policy to 45 CFR 155.410 and § 155.420 comply with the premium grace period standards set forth at 45 CFR 156.270 for required premium payment prior to disenrollment. We believe aligning the Exchange standards will ensure consistency for a state electing to model its BHP enrollment policies after the Exchange's. Should a state elect to implement a continuous enrollment policy similar to Medicaid, we propose in paragraph (b)(3), a 30-day premium grace period, which is

consistent with the premium grace period standard that is applied in CHIP.

At § 600.525(b), we propose to again base consequences of nonpayment of premium to the state's enrollment policies. Specifically, in paragraph (b)(1), we propose that a state applying the Exchange enrollment policies to its BHP may not restrict reenrollment to BHP beyond the next open enrollment period, or if applicable, the next special enrollment period. At paragraph (b)(2), we propose that a state implementing a continuous enrollment policy apply the CHIP reenrollment standards set forth in § 457.570(c). Specifically, a state would be prohibited from imposing a lockout period of more than 90 days, from continuing to impose a lockout period after an enrollee has paid past due premiums, and could not require collection of past due premiums as a condition of eligibility for reenrollment upon the expiration of the lockout period. Nothing in this proposed rule would preclude a state from continuing to seek past due premiums from an individual. Should a state elect to implement a premium lockout period, it must define the length of such a period in its BHP Blueprint. As with the disenrollment requirements described in paragraph (a), we believe that aligning the consequences of nonpayment of premiums to the state's enrollment policies will ensure program continuity and consistency.

G. Payments to States

We propose adding subpart G consisting of § 600.600 through § 600.615 to specify the BHP payment methodology and the procedures by which HHS will determine a state's BHP payment amount.

1. Basis, scope and applicability (§ 600.600)

Section 1331(d)(1) of the Affordable Care Act specifies that the Secretary must transfer each fiscal year federal funds to a state's BHP trust fund in the amount determined by the Secretary in accordance with the requirements set forth in section 1331(d)(3). Specifically, the statute requires the Secretary determine a per enrollee payment amount based on 95 percent of the premium tax credit under section 36B of the Code, and the cost-sharing reductions under section 1402 of the Affordable Care Act, that would have been provided to the enrollee in that fiscal year if he or she had been enrolled in a qualified health plan through an Exchange. When determining this payment amount, the statute further directs the Secretary to consider additional factors, such as age and

income of the enrollee as well as geographic rating differences.

Given the unique statutory requirements regarding the transfer and determination of a state's BHP payment amount, we propose, at § 600.605, the two components (the premium tax credit component and the cost-sharing reduction component) used in the general calculation of the state's federal payment. At § 600.610, we propose the process by which the Secretary will determine the state's BHP amount, and in § 600.615, we propose that HHS make quarterly federal deposits into the state's BHP trust fund.

2. BHP payment methodology (§ 600.605)

As described previously, section 1331(d)(3) of the Affordable Care Act directs the Secretary to determine the amount of payment to equal 95 percent of the premium tax credit and the cost-sharing reductions that the enrollee would have received had he or she enrolled in a qualified health plan through the Exchange. We received numerous comments during our October 2011 RFI process requesting clarity regarding the amount of the cost-sharing reductions that the Secretary will use when determining the BHP payment amount. Commenters expressed confusion by the placement of the comma in the statutory language and requested that HHS specify whether it would use 100 percent of the cost-sharing reductions, or 95 percent, which would coincide with the percentage of the premium tax credit. We have carefully considered this issue, and have interpreted the statute to read that the payment amount equals 95 percent of the cost-sharing reductions.

We are interpreting the statutory language directing the Secretary to make payments on a fiscal year to apply to a federal fiscal year. In addition, while payments to states will be made based on the federal fiscal year, the determination of payment rates will be made consistent with the calendar year operations utilized on the Exchange. Given that the determination of BHP payment rates requires data from the Exchange, we believe that utilizing calendar year based data will provide a more accurate determination of the payment rate.

We propose codifying in § 600.605(b) the seven factors specified in statute that must be considered when determining a state's BHP payment amount. We anticipate that these seven factors will be included in the funding formula which will be published on an annual basis in the proposed payment

notice process as described further in § 600.610.

We are also seeking specific comments on our proposed approach to address the statutory requirement that the federal payment take into account the health status of the enrollee for purposes of determining risk adjustment and reinsurance payments that would have been made had the individual enrolled in a QHP through the Exchange. As finalized in the March 11, 2013 **Federal Register** notice of benefit and payment parameters for 2014, 45 CFR 153.400(a)(2)(iv) excludes BHP participating plans from contributions to the reinsurance program. As such, BHP plans are not eligible to receive reinsurance payments since they are not contributing to the program; therefore, we are proposing to exclude reinsurance payments from consideration in the BHP funding formula.

With respect to risk adjustment, we have carefully considered this issue as we have received several comments from both states and stakeholders emphasizing the importance risk adjustment can have on not only a state's decision to elect BHP as an alternative source of coverage for low income adults, but also to the program's sustainability. Given the challenges associated with applying risk adjustment in the early years of both BHP and the individual market, we considered two possible approaches to recognize that BHP enrollees might differ from consumers in the individual market with respect to health status, associated health care service utilization, and program uptake. One possible approach we considered was to include BHP plans in risk adjustment as well as require that BHP enrollees and plans be included in the individual market risk pool. Under this approach, the funding mechanism would take into account the actual payments that would be made from that risk pool. The second approach was to account for the various differences between BHP enrollees and individual market enrollees in the BHP funding methodology only. We also considered under this approach the most appropriate time to include a risk adjustment factor in the BHP funding methodology; that is, whether we should address risk adjustment for year one or in the future, as well as the potential consequences of such timing.

We have carefully considered both approaches, and have decided that the most appropriate approach is to develop a risk adjustment factor to include in the BHP funding methodology rather than include BHP in the individual market risk pool. Our rationale for this approach is twofold. Specifically,

potential differences may exist between BHP and Exchange benefit packages and the market reform rules in the Affordable Care Act, such as the requirements for guaranteed issue, standard premium rating, and other such requirements may not apply to some standard health plan offerors. We believe that developing an appropriate factor in the BHP funding formula that accounts for the potential difference in health status between BHP enrollees and individual market enrollees would ensure that the BHP payment accurately reflects the statute's requirement to consider the impact of risk adjustment. In addition, we believe that this would provide a level of funding to BHP that more accurately reflects the expected health care costs for BHP enrollees.

Finally, the risk adjustment method being applied in the individual market is a concurrent model, which means that a current year's experience is applied retrospectively to premiums; however, we are proposing, as discussed further below, to limit the retrospective adjustments in calculating the federal payment amount for BHP to a small set, including enrollment, to improve predictability for states in the amount of federal funding they will receive in a given fiscal year. In so doing, we are not proposing to retrospectively apply risk adjustment to the federal payment amount.

While we seek comment on this approach, we will provide additional guidance that will further address this factor in our proposed Payment Notice which will be published in the fall of 2013 and will provide an additional opportunity for comment. Finally, we are not proposing to consider the issue of risk corridors in the BHP funding methodology as section 1342 of the Affordable Care Act specifically limits the program to QHPs.

Section 1331(d)(3)(B) of the Affordable Care Act directs the Secretary to adjust the payment for any fiscal year to reflect any error in the determination of the payment amount in the preceding fiscal year. We believe that the statutory language supports the idea that an adjustment that would trigger a repayment obligation is limited to "errors" in the determination of payment, and does not include adjustments to improve the underlying methodology for the per member per month payment rates. Specifically, the statute does not appear to contemplate adjustment to the certified methodology as an error; instead, it appears to contemplate that adjustments to the methodology are only made prospectively and do not include retroactive corrections/repayment.

Section 1331(d)(3)(A) of the Affordable Care Act specifies that the Secretary must determine the payment based on a certified methodology, and to the extent that the determination accurately reflects that methodology, there would be no error. Furthermore, we believe that the statute supports the idea that no retrospective adjustment would be necessary, subsequent to certification of the methodology, if the adjustment is an improvement in the methodology (for example, based on new data or analysis that would improve the accuracy of that methodology). The following list includes several examples of when a retrospective adjustment may or may not occur:

- Retrospective adjustment would be warranted for mathematical errors in applying the certified methodology.
- Retrospective adjustment in aggregate payments would be warranted if based on incorrect enrollment data.
- Retrospective adjustment would not appear to be warranted if the determination accurately reflected the certified methodology, and thus was consistent with the requirements of section 1331(d)(3)(A) of the Affordable Care Act, even if, based on new data or analysis, the same methodology would not be certified for subsequent fiscal years.

The interpretation of a prospective annual adjustment, except in the case of an error, means that the payment methodology published in accordance with the process set forth in § 600.610 will remain in effect for an entire fiscal year. The Secretary will only change the methodology for the following fiscal year in order to improve the accuracy of the methodology or to reflect more accurate data sources and assumptions. Should a change in methodology occur, the change will be applied on a prospective basis only. In addition to limiting retrospective adjustments to error, we also propose, as described further below, to adjust a state's preceding fiscal year payment amounts based on actual enrollment in that year. We believe that this process will ensure the financial stability of the program as well as provide fiscal certainty for states as they develop their budgets each year.

3. Secretarial determination of BHP payment amount (§ 600.610)

Section 1331(d)(3)(B) of the Affordable Care Act requires that the Chief Actuary of CMS, in consultation with the Department of Treasury's Office of Tax Analysis, certify the methodology to ensure that it meets the requirements set forth in the statute. The statute further provides that the certification must be based on sufficient

data from the state and from comparable states regarding their experiences with other insurance affordability programs.

We propose, at § 600.610(a), that beginning in fiscal year 2015, and upon receipt of certification, HHS will determine and publish in the **Federal Register** a proposed payment notice describing the BHP payment methodology utilized to calculate the payment factors and federal payment amount for the next fiscal year. This proposed payment notice will be published in October of each year. For example, in October 2014, HHS will publish the proposed BHP payment methodology that would be used to calculate the payment rates for fiscal year 2016. This approach is consistent with how payment parameters for Exchanges will be determined as well as how CHIP allotments were determined during the initial implementation of the program. In addition, we propose that the proposed payment notice may require states to submit data in order for the Secretary to determine and publish the BHP payment factors and to support the calculation of an estimated federal payment amount for the fiscal year in a subsequent **Federal Register** notice. We believe that publishing a proposed payment notice that includes the payment methodology would provide appropriate opportunity for public comment. We believe this timing would provide a state the information it needs to appropriately budget for BHP each year as well as provide fiscal assurance, a concern raised during our October 2011 RFI process from both states and other stakeholder groups.

We propose in § 600.610(b) that the Secretary determine and publish the final BHP payment methodology and payment factors that could be used to calculate an estimated federal payment amount based on a state's projected enrollment in a subsequent **Federal Register** notice. We propose publishing this notice in February of each year to provide states sufficient time to make any necessary adjustments to their BHP contracts well in advance of the new coverage year that begins in January. The final BHP payment amount will be calculated quarterly, as determined by using the final payment methodology and factors as well as actual enrollment and other data provided at regular intervals as specified in the notice. If needed, other applicable data will be used as determined by the Secretary in the final notice.

Given the timing of this proposed regulation and the January 1, 2015 implementation date, we intend to modify the publication dates of the payment notices for the first year of BHP

implementation. Specifically, because we will need to gather data from an interested state in order to model and calibrate the payment method and associated factors needed to determine preliminary payment amount, we intend to determine and publish in the **Federal Register** a proposed payment notice describing the BHP payment methodology for fiscal year 2015 in the fall of 2013. This notice will include requests for data to help the Secretary determine payment amounts. A subsequent **Federal Register** notice containing the final fiscal year 2015 BHP funding methodology and payment amounts (which will be calculated by inputting the appropriate data into the final BHP funding methodology) will be published concurrently with the final BHP regulation. We invite comment on our proposed approach to the use, and publication, of the proposed and final payment notices, especially with respect to the variation in fiscal year 2014, to determine whether this approach ensures administrative and financial stability for states interested in participating in BHP.

Under § 600.610(c)(1), we propose to determine, on a quarterly basis, state specific prospective aggregate payment amounts. This prospective amount will be calculated using the payment methodology and factors in the final payment notice. This prospective amount will be determined by multiplying the payment rates described in § 600.610(b) of this section by the projected number of BHP enrollees. This calculation may include different payment rates for enrollees related to the factors described in § 600.605(b). We are proposing this approach to quarterly prospective aggregate payments to provide the state with financial stability and assurance.

In § 600.610(c)(2), we propose retrospective adjustments to the aggregate amount described in § 600.610(c)(1) to account for any errors and to account for actual enrollment. The adjustment to account for actual enrollment would occur sixty days after the end of a quarter, and we would use the same method when determining a state's prospective aggregate payment amount; however, the enrollment numbers used in this calculation will be based on actual enrollment for the previous quarter rather than projected numbers. In the event that an adjustment to the payment amount is needed to account for differences in projected versus actual enrollment, we propose either depositing an additional payment in the state's BHP trust fund (to account for higher-than-projected enrollment), or a reduction in the state's

upcoming quarter's prospective aggregate payment amount (to account for lower-than-projected enrollment). We have proposed this process given that statute only authorizes payment on a per enrollee basis; therefore, we have determined that payments in excess of the per enrollee amount would not be permitted by statute. As with our proposed approach to determining proposed and final payment notices, we seek comment on this method of calculating and adjusting aggregate BHP payment amounts.

Finally, in § 600.615, we propose to make quarterly deposits to the state's BHP trust fund based on the aggregate quarterly payment amounts discussed in § 600.610(c).

H. BHP Trust Fund

We propose adding subpart H consisting of § 600.700 through 600.715 to specify the use of BHP trust funds, establishment of fiscal policies and accountability, and restitution and disallowance procedures.

1. Basis, scope and applicability (§ 600.700)

Section 1331(d)(2) of the Affordable Care Act specifies that a state implementing a BHP must establish a trust for the deposit of federal BHP payments. Because the trust fund is an integral feature of the BHP, we propose at § 600.705 to set new standards with respect to the establishment of the trust fund as well as the standards for allowable BHP trust fund expenditures. We propose at § 600.710 that a state establish appropriate fiscal and accountability standards to ensure that BHP trust funds are expended in accordance with the new standards set forth in § 600.705. At § 600.715, we propose restitution and disallowance procedures in the event that a determination is made that BHP trust funds have been improperly expended.

2. BHP Trust Fund (§ 600.705)

Section 1331(d)(2) of the Affordable Care Act specifies that the state establish a trust fund to receive federal deposits for the provision of the BHP. The statute also provides that the state may use unspent BHP trust funds to reduce premiums and cost sharing, or to provide additional benefits, for BHP enrollees. Under § 600.705(a), we propose that the state establish a trust fund at an independent entity, or as a subset account to the state's General Fund, and identify trustees responsible for oversight of the BHP trust fund along with individuals with the power to authorize withdrawal of funds. In addition to the federal deposits, we are

proposing in paragraph (b) that a state may deposit non-federal funds into its trust fund, which can include receipts from enrollees, providers or other third parties for standard health coverage. However, once non-federal funds have been deposited, such funds will be treated in the same manner as federal funds, must remain in the BHP trust fund and adhere to the same standards in accordance with paragraphs (c) and (d) in this section. We propose at § 600.705(c) to codify the statutory requirement which permits the use of BHP trust funds only to reduce premiums and cost sharing of standard health plan coverage, or to provide additional benefits for, eligible individuals enrolled in standard health plans within the state.

Finally, section 1331(d)(2) specifies particular limitations on the use of BHP trust funds. Specifically, states are not permitted to use BHP trust funds for purposes of meeting any matching or expenditure requirement of any federally-funded program, such as Medicaid or CHIP. We propose in § 600.705(d) to specify this as well additional situations in which the expenditure of BHP trust funds are not permitted, including the statutory prohibition of the use of funds to cover administrative costs. In § 600.705(e), we propose that a state may maintain in its trust fund a surplus or reserve of unexpended funds until such time as those funds are expended in accordance with the standards set forth in § 600.705(c) and (d).

3. State fiscal policies and accountability (§ 600.710)

We propose at § 600.710 to require the inclusion of fiscal policies and accountability requirements in the state's BHP Blueprint so that the state can document the use of BHP trust funds for authorized purposes. Specifically, under § 600.710(a), we propose that the state maintain an accounting and record system to ensure that BHP trust funds are properly maintained and expended. In accounting for such expenditures, the state must adhere to the cost principles applicable to governmental entities under Office of Management and Budget (OMB) Circulars A-87 and A-133.

We propose at § 600.710(b) that the state obtain an annual certification from the BHP trustees, the chief financial officer, or designee, certifying: (1) The program's financial statements for the fiscal year; (2) the separation of BHP trust funds from other state program funding to assure that BHP trust funds are not being used as the non-federal share to meet matching or expenditure

requirements of any federally-funded program, such as Medicaid or CHIP; and (3) compliance with all federal requirements consistent with those specified for the administration and provision of the program. In accounting for such expenditures, the state must adhere to the cost principles applicable to governmental entities under Office of Management and Budget (OMB) Circulars A-87 and A-133.

Under § 600.710(c), we propose that the state conduct an independent audit of BHP trust fund expenditures over a period of three years to determine whether the expenditures made during this time period were allowable and applied only to costs associated with reducing premiums and/or cost sharing, or provision of benefits. The independent audit may be conducted as a sub-audit of the single state audit conducted in accordance with OMB Circular A-133, and must follow the cost accounting principles in OMB Circular A-87. We propose that the state conduct the independent annual audit consistent with the standards set forth in chapter 3 of the Government Accountability Office's Government Auditing Standards (which are also consistent with those in Medicaid). As currently proposed, the state may elect to contract with a third party to conduct the audit, or may elect to use a state agency to the extent that the state can assure the audit was conducted in an independent manner.

We further propose in § 600.710(d) that the state publish annual reports on the use of funds, including a separate line item that tracks the use of funds described in § 600.705(e) to further reduce premiums and cost sharing, or for the provision of additional benefits, within 10 days of approval by the trustees. If applicable for the reporting year, the annual report must also contain the findings for the audit conducted in accordance with paragraph (c) of this section. At § 600.710(e), we propose that the BHP Blueprint establish and maintain BHP trust fund restitution procedures, in the event that the state or trustees must restore funds to the trust fund due to unallowable expenditures. We propose that the state maintain records for three years after the date of submission of a final expenditure report, or beyond, in instances where audit findings have not been resolved, consistent with the current standards in CHIP.

4. Resolution of questions about BHP transactions: Corrective action, restitution and disallowance of improper expenditures from the BHP Trust Fund (§ 600.715)

We propose at §§ 600.715(a) and (b) that when a question about the proper use of trust fund resources arises through the application of state fiscal policies, or through state or federal review and audit processes, the state and BHP trustees shall review those questions, and develop a written response to the questions raised no later than 60 days upon receipt of such a report, unless otherwise specified in the report, review or audit. In addition, based on that review, the state and BHP trustees shall take corrective action to ensure proper use of funds and restitution of questioned funds, as appropriate, to the state's trust fund. We further propose in paragraph (b) of this section, to the extent that the state and the BHP trustees determine that BHP trust funds may not have been properly spent, they shall ensure restitution to the BHP trust fund of amounts questioned by HHS, OIG or state auditors or reviewers. These policies are consistent with the normal business operations and proper management of a trust fund, with the possibility of ongoing reconciliation and correction of expenditures in the context of ongoing relationships with contractors and other business associates.

As proposed in § 600.715(b), to the extent that the state and BHP trustees determine that BHP trust funds may not have been properly spent, they must ensure restitution to the trust fund of the amounts in question. This is consistent with the nature of a trust fund, and the fiduciary relationship that trustees and other controlling entities have in the management of a trust fund. Restitution may be made directly, or by a liable third party (which could include the recipient of the improper expenditures, or an indemnifying insurer). Trustees may be the beneficiaries of indemnification agreements entered into by the state, the BHP trustees or an insurer.

We propose in § 600.715(c) to provide considerable flexibility in the timing of such restitution; restitutions may occur in a lump sum amount, or in equal installments. Restitution to the BHP trust fund cannot exceed a two year period from the date of the written response in accordance with paragraph (a) of this section. We propose providing a state with flexibility to determine the restitution option that best fits the circumstances so as to ensure the

viability and sustainability of its program.

We believe that most questioned expenditures will be resolved through these steps based on preliminary findings prior to any final determination that there has been an improper or unauthorized expenditure. To the extent that the BHP trustees and the state assure restitution of questioned BHP expenditures, the result will be that there will be no net improper or unauthorized expenditure. But if questioned funding is not restored to the BHP trust fund, and the questions are not otherwise resolved, then there would be an improper expenditure of federal funds. The state is not entitled to retain federal grant funding expended for purposes not statutorily authorized, and would need to return any such amounts.

To provide for the return of federal funding not expended for statutory authorized purposes, we propose at § 600.715(d) a procedure for HHS to disallow federal BHP funding that the Secretary (or a designated hearing officer) determines to have been improperly expended, after taking into account provisions for restitution of funds (other than when the restitution schedule elected by the BHP trustees and state has not been maintained). While we believe such disallowances will be rare in light of the oversight that we expect will be exercised on a state level through the trustees and the state audit process, disallowances are a necessary part of the federal oversight process and ensure that the statutory conditions for BHP funding are met.

Because we believe that the issues underlying a federal disallowance will generally have been fully developed in these state level audit and reviews, or through federal audit and review processes that will provide ample opportunity for resolution by the BHP trustees and the state questions through corrective action and restitution, we provide for a simplified disallowance process. After notice of an initial finding that contains a written explanation of the basis for the determination, the state will have an opportunity to submit information and argument for administrative reconsideration. Upon receipt of such a submission, the Secretary (or designated hearing officer) will determine if further information or procedures are necessary. The Secretary will then issue a final decision within 90 days after the later of the date of receipt of the reconsideration request or the date of the last scheduled proceeding or submission.

In § 600.715(f), we set forth the timing of the return of disallowed federal BHP

funding. Disallowed federal BHP funding must be returned to HHS within 60 days after the later of the date of the disallowance notice or the final administrative reconsideration upholding the disallowance. Such repayment cannot be made from BHP trust funds, but must be made with other, non-federal, funds.

Finally, we propose to revise the definition of “individual market” as described in 45 CFR 144.103 to clarify that Medicaid, CHIP and BHP coverage is not considered health insurance coverage available on the individual market.

IV. 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. In order 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, calculated at 35 percent of salary, which is based on the March 2011 Employer Costs for Employee Compensation report by the Bureau.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs):

A. ICRs Regarding the BHP Blueprint (§§ 600.110, 600.115, 600.125, 600.305, 600.320, 600.345, 600.405, 600.410, 600.415, 600.420, 600.425, 600.505, 600.510, 600.525, 600.530, and 600.710)

In § 600.110, states wishing to participate in the BHP would prepare and submit a “Blueprint” to the Secretary for certification of the state’s program. Although we intend to issue a template outlining the required components of a Blueprint, that

template will be made available at a later time. In the meantime, we are setting out the Blueprint’s burden estimates since its requirements are proposed in this proposed rule.

Section 600.115, specifies that the Blueprint must be signed by the state’s governor or signed by an official delegated by the governor. The Blueprint must identify the agency and officials, by position or title, who are responsible for program administration, operations, and financial oversight. The Blueprint would also be required to identify the required characteristics for all BHP Trust Fund trustees.

In § 600.305, the Blueprint would be required to be consistent with the standards used to determine BHP eligibility. The state may not impose conditions of eligibility other than those identified in this section.

In §§ 600.320 and 600.345, the Blueprint would be required to ensure that the state’s enrollment, disenrollment, and verification policies are consistent with these sections. It must also include a plan to ensure coordination with and eliminate gaps in coverage for individuals transitioning between other insurance affordability programs.

In § 600.405, the Blueprint would be required to ensure that standard health plan coverage include (at a minimum) EHBs including any changes resulting from periodic reviews. While states have the option to allow benefits in addition to the EHBs, standard health plan coverage must be in compliance with 45 CFR 156.280 regarding abortion services.

In § 600.410, states would be required to assure that they comply with competitive contracting provisions in § 600.410(b), (c), and (d). This includes but is not limited to a justification for states unable to implement a competitive contracting process for benefit year 2015 as well as a description of the process it will use to enter into contracts for standard health plans. The state must also include a proposed timeline for implementing a competitive contracting process and provide assurance that the process includes specific negotiation criteria.

In § 600.415, states would be required to enter into a contract (with an offeror) for the administration and provision of standard health plans. A standard set of contract requirements would be included in the Blueprint.

In § 600.420, the Blueprint would be required to include a description of how the state will ensure (to the greatest extent possible) enrollee choice of standard health plans. States may also enter into a joint procurement with

other states. States electing this option must address the Blueprint provisions in § 600.420(b)(2).

In § 600.425, the Blueprint would be required to demonstrate how the state will ensure coordination with other insurance affordability programs.

In § 600.505, the Blueprint would be required to describe: the amount of the premium imposed on enrollees; the group or groups that are subject to the applicable premium; the collection method and procedure for the payment of an enrollee's premium; the disenrollment procedures and consequences of nonpayment of premiums. The Blueprint must also ensure that the total premium liability for an enrollee does not exceed the monthly premium that the enrollee would have paid had he/she enrolled in the second lowest cost silver plan offered through an Exchange.

With regard to cost sharing imposed on enrollees, § 600.510 would require that the Blueprint identifies the group or groups of enrollees that may be subject to the cost sharing, and an assurance that the state has established a system to monitor and track the cost-sharing standards specified in § 600.520.

In § 600.525(a), the Blueprint would be required to assure that the state is in compliance with the disenrollment procedures described in 45 CFR 155.430.

If a state has elected to implement a continuous enrollment policy, the state may also impose a lockout period after an enrollee has been disenrolled from the program. The Blueprint must define the length of the state's lockout period and assure that it will not continue to impose a premium lockout period after an enrollee's past due premiums have been paid and will not require the collection of past due premiums as a condition of eligibility for reenrollment once the state-defined lockout period has expired.

In § 600.710, the Blueprint would be required to ensure that the state's fiscal policies and accountability standards are consistent with this section. In this regard, the Blueprint must ensure that the BHP administering agency will maintain an accounting system and support fiscal records to assure that the trust funds are maintained and expended in accordance with federal requirements. The Blueprint would also be required to assure that the administering agency will obtain an annual certification from the state's BHP trustees, or chief financial officer (or designee), certifying the state's trust fund financial statements for the fiscal year, that the trust funds are not being used as the non-federal share to meet

matching or expenditure requirements of any federally-funded program, and that the trust fund is used in accordance with federal requirements.

The Blueprint would include an assurance that the administering agency will conduct an audit of trust fund expenditures, publish annual reports on the use of funds and audit findings (if applicable), establish and maintain trust fund restitution procedures, and retain records. The Blueprint must also be accompanied by a funding plan that describes the enrollment and cost projections for the first 12 months of operation and funding sources beyond the trust fund (if any). The plan must demonstrate that federal funds will only be used to reduce premiums and cost-sharing or to provide additional benefits.

Finally, the Blueprint would be required to describe how the state will ensure program integrity, including how the state will address potential issues of fraud, waste, and abuse and ensure consumer protections.

While a few states have expressed interest in pursuing the Basic Health Program in their state, HHS does not have an estimate of how many states will pursue this option. As such, we provide the burden estimate for one state and seek comment on the number of likely states to pursue this option. We estimate that it will take a state approximately 100 hours to develop the Blueprint and submit to the Secretary.

For purposes of this estimate, we assume that meeting these requirements will take a health policy analyst 80 hours (at an average wage rate of \$43 an hour) and a senior manager 20 hours (at an average wage rate of \$77 an hour). The estimated cost burden for one state is \$4,980.

As described in § 600.125, a state must notify HHS of any significant changes to its Blueprint. We estimate that it will take one state 12 hours to revise its Blueprint and submit it to HHS. We presume that it will take a health policy analyst 10 hours at \$43 an hour and a senior manager 2 hours at \$77 an hour to submit the change. The estimated cost burden for one state is \$584.

Since we estimate less than 10 annual respondents, the requirements/burden are exempt from formal OMB review and approval under 5 CFR 1320.3(c). Consequently, a PRA package is not applicable.

B. ICRs Regarding the Operation of a Basic Health Program (§§ 600.145, 600.150, and 600.170, and Subpart E)

The ongoing burden associated with the requirements under § 600.145 is the

time and effort it would take each participating State Medicaid Program to perform the recordkeeping and reporting portions of the core operating functions of a BHP including eligibility determinations and appeals as well as enrollment and disenrollment, health plan contracting, oversight and financial integrity, consumer assistance, and if necessary program termination.

BHPs would function as part of a coordinated eligibility and enrollment structure over all insurance affordability programs. They need to maintain and transfer eligibility accounts with equal accuracy and efficiency as the Exchange, as well as maintain enrollment data reported monthly to HHS. As such, we are estimating equal burden to the Exchange for this function. We estimate that it will take 52 hours annually to ensure the collection of enrollment data. Additionally we estimate it will take 12 hours to submit monthly enrollment data and 12 hours to reconcile data monthly.

The BHP will issue notices to applicants and eligible individuals regarding eligibility status. These notices must be developed and processed in a coordinated fashion with other insurance affordability programs. The burden estimates here are only for added burden of customizing to the BHP. We estimate that it will take a state 16 hours annually to customize notices and processes for the BHP.

We estimate that it will take 356 hours ((24 × 12) + 52 + 16) for a BHP to meet these reporting requirements for eligibility and enrollment functions. We presume that it will take an operations analyst 220 hours (at \$55 an hour), a health policy analyst 80 hours (at \$43 and hour) and a senior manager 56 hours (at \$77 an hour). To carry out the requirements for this function, we estimate the total cost of the reporting burden to be \$19,852 per state.

Part 600, subpart E, describes reporting requirements associated with the core function of standard health plan contracting and operations. Each state BHP must contract with standard health plan offerors and require participating standard health plans to provide transparency in covered benefits, cost-sharing and participating providers by reporting and making public such information annually. We estimate that it will take a state 120 hours to create and evaluate the request for proposals for participating standard health plans. Using the same estimates as the Exchange, we presume that it will take an additional 24 hours to collect the information necessary to ensure that coverage and transparency requirements

are met for a total annual burden per state of 144 hours. We presume that it will take a health policy analyst 100 hours (at \$43 an hour), an operations analyst 20 hours (at \$55 an hour) and a senior manager 24 hours (at \$77 an hour). The cost burden per state is \$7,248.

Oversight and financial integrity are core functions of the BHP that include annual reporting requirements to HHS on the operation of the trust fund, providing annual data necessary to acquire and reconcile federal funding and complete financial sections of the annual report in § 600.170. We estimate that it will take a state operating a BHP 24 hours annually to complete these reporting requirements. We presume that it will take an operations analyst 10 hours (at \$55 an hour), a financial analyst 10 hours (at \$62 an hour) and a senior manager 4 hours (at \$77 an hour) for cost burden of \$1,478 for one state.

Finally, BHPs are required in § 600.150 to ensure that there is enrollment assistance and information readily available to understand the program and any choices a consumer would have. We estimate that it will take a state 48 hours annually to create and share its format for required information with participating health plan offerors and to provide the necessary oversight to ensure that each offeror has complied with the specifications. Additionally, the state must publish enrollment choices, covered services and any options and limitations in a manner that meets accessibility and readability standards.

The total burden estimate for program termination is 48 hours per state. We presume that it would take a health policy analyst 40 hours (at \$43 an hour) and an operations analyst 8 hours (at \$55 an hour) to fulfill the enrollment assistance and information requirements burden. The total cost burden to the state for this function is \$2,160.

Since we estimate less than 10 annual respondents, the requirements/burden are exempt from formal OMB review and approval under 5 CFR 1320.3(c). Consequently, a PRA package is not applicable.

C. ICRs Regarding the Termination of a Basic Health Program (§ 600.140)

Section 600.140 would direct a state electing to terminate its BHP to submit a notice and transition plan to the Secretary. We estimate that it would take a state 24 hours to create and submit such information. A state must submit written notice to all participating standard health plans and to all enrollees regarding their plans to

terminate. Consistent with other notice estimates in the Exchange and BHP, we estimate that it would take 16 hours to prepare and submit each notification for a total of 32 hours per state. Finally, the state would be required to perform eligibility account transfers on behalf of enrollees. Due to the requirement that a state use the single eligibility service for all insurance affordability programs, we do not believe this requirement to necessitate much effort. We estimate that a state can fulfill this requirement in 8 hours.

The total burden estimate for program termination is 64 hours (24 + 32 + 8) per state. We presume that it would take a health policy analyst 44 hours (at \$43 an hour), an operations analyst 10 hours (at \$55 an hour) and a senior manager 10 hours (at \$77 an hour) to fulfill the program termination reporting burden. The total cost burden to the state for this function is \$3,212.

Since we estimate less than 10 annual respondents, the requirements/burden are exempt from formal OMB review and approval under 5 CFR 1320.3(c). Consequently, a PRA package is not applicable.

D. Submission of PRA-Related Comments

We invite public comments on these potential information collection requirements. If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, (CMS-2380-P) Fax: (202) 395-6974; or Email: OIRA_submission@omb.eop.gov.

Comments must be received on/by November 25, 2013.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Statement (or Analysis)

A. Overall Impact

We have examined the impacts 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 Social Security 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). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). The Basic Health Program provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage through Exchange. We are uncertain as to whether the effects of this rulemaking will be "economically significant" as measured by the \$100 million threshold, and hence not a major rule under the Congressional Review Act. We seek comment on the analysis provided below to help inform this assessment by

the time of the final rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

1. Need for the Rule

Section 1331 of the Affordable Care Act (codified at 42 USC § 18051) requires the Secretary to establish a Basic Health Program. This proposed rule implements that section.

2. Benefits

We anticipate that the Basic Health Program will provide benefits to both consumers and states.

a. Benefits to Consumers

The Basic Health Program (BHP) targets low-income individuals who would be eligible for premium and cost-sharing reductions, if they purchased health insurance through an Exchange. These individuals often have variable income that causes them to move between insurance programs. For example, if their income drops, they may be eligible for Medicaid, and when their income rises, they would be eligible to purchase insurance (with premium and cost-sharing reductions) on an Exchange. This variability in income can result in individuals moving back and forth between Medicaid and an Exchange, a phenomenon known as “churning.” Because Medicaid health plans and health plans offered on Exchanges vary in terms of benefits, provider networks, cost-sharing, and administration, churn can be disruptive and lead to poorer health outcomes due to lack of continuity of care. Researchers have estimated that the Basic Health Program will significantly reduce the number of individuals that churn between Medicaid and Exchanges.¹

We request additional comments and data that would help us assess the benefits of a Basic Health Program to consumers.

b. Benefits to States

Several states currently operate health insurance programs for low-income adults with income above Medicaid eligibility levels. These states believe that the programs confer benefit to their residents beyond what those individuals

could obtain by purchasing health insurance on an Exchange. The Basic Health Program established by this rule would give states the option to maintain these programs rather than sending those individuals to purchase insurance on the Exchange. We request additional comments and data that would help us assess the benefits of a Basic Health Program to states.

3. Costs

The provisions of this rule were designed to minimize regulatory costs. Rarely did we create new administrative structures, both because the Basic Health Program does not include administrative funding and because of the need for states to coordinate with other insurance affordability programs. To the extent possible, we borrowed structures from existing programs. We request comments and data that would help us assess the costs of a Basic Health Program.

4. Transfers

The provisions of this rule are designed to transfer funds that would be available to individuals for premium and cost-sharing reductions for coverage purchased on an Exchange to states to offer coverage through a Basic Health Program. In states that choose to implement a Basic Health Program, eligible individuals will not be able to purchase health insurance through the Exchange. As a result, fewer individuals will use the Exchange to purchase health insurance. This choice may have economic impact, and we seek comments and data that would help us assess that impact.

5. Regulatory Alternatives

Many of the structures of the Basic Health Program are set out in statute, and therefore we were limited in the alternatives we could consider. When we had options, we attempted to limit the number of new regulatory structures we created. To make the program easier for states to implement, we adopt or adapt regulations from existing programs—Medicaid, the Children’s Health Insurance Program, and the Exchanges—whenever possible, rather than create new structures. Two areas in which we had choices are reporting compliance with federal rules and contracting with standard health plans.

a. Reporting compliance with federal rules to HHS

We followed the paradigm of adopting or adapting existing structures when creating a process for reporting state compliance with federal rules. Two existing structures we considered were

the Exchange model of Blueprints and the Medicaid model of state plans. We chose to use the Blueprint model, which we believe will be less burdensome to states than the state plan model. We seek comments, data, and suggestions for alternative methods for states to report to HHS.

b. Contracting requirements

Similarly when choosing how to regulate state contracts with standard health plans, we looked to models in the Exchange and Medicaid rather than creating new regulatory schemes. We have adopted, where possible, existing procurement requirements in order to minimize the burden on states. In addition, we have allowed states the option to seek an exemption from competitive contracting requirements for program year 2015 if they are unable to meet the requirements in the first year of the program. We seek comments, data, and suggestions for other alternatives to the contracting process we propose.

B. Unfunded Mandates Reform Act

Section 2 02 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2013, that threshold is approximately \$141 million. States have the option, but are not required, to establish a BHP. Thus, this proposed rule does not mandate expenditures by state governments, local governments, or tribal governments

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity. Few of the entities that meet the definition of a small entity as that term is used in the RFA would be impacted directly by this proposed rule.

¹ Hwang, A., S. Rosenbaum, and B. D. Sommers. “Creation Of State Basic Health Programs Would Lead To 4 Percent Fewer People Churning Between Medicaid And Exchanges.” *Health Affairs* 31.6 (2012): 1314–1320.

Buettgens, M., A. Nichols, and S. Dorn. “Churning Under the ACA and State Policy Options for Mitigation: Timely Analysis of Immediate Health Policy Issues.” Urban Institute (2012). Available at <http://www.urban.org/UploadedPDF/412587-Churning-Under-the-ACA-and-State-Policy-Options-for-Mitigation.pdf>.

Because this proposed rule is focused on eligibility and enrollment in public programs, it does not contain provisions that would have a significant direct impact on hospitals, and other health care providers that are designated as small entities under the RFA. However, the provisions in this proposed rule may have a substantial, positive indirect effect on hospitals and other health care providers due to the substantial increase in the prevalence of health coverage among populations who are currently unable to pay for needed health care, leading to lower rates of uncompensated care at hospitals. The Department cannot determine whether this proposed rule would have a significant economic impact on a substantial number of small entities, and we request public comment on this issue.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. 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 and has fewer than 100 beds. As indicated in the preceding discussion, there may be indirect positive effects from reductions in uncompensated care. Again, the Department cannot determine whether this proposed rule would have a significant economic impact on a substantial number of small rural hospitals, and we request public comment on this issue.

D. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct effects on States, preempts State law, or otherwise has Federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state.

We have consulted with states to receive input on how the Affordable Care Act provisions codified in this proposed rule would affect States. We have participated in a number of conference calls and in person meetings with state officials.

We continue to engage in ongoing consultations with states that have expressed interest in implementing a BHP through the BHP Learning Collaborative, which serves as a staff level policy and technical exchange of information between CMS and the States. Through consultations with this Learning Collaborative, we have been

able to get input from States on many of the specific issues addressed in this rule.

List of Subjects

42 CFR Part 600

Administrative practice and procedure, Health care, Health insurance, Penalties, and Reporting and recordkeeping requirements, State and local governments.

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority at section 1331(a)(1) of the Affordable Care Act, the Centers for Medicare & Medicaid Services and the Office of the Secretary propose to amend 42 CFR chapter IV and 45 CFR subtitle A, respectively, as set forth below.

Title 42

■ 1. Subchapter I, consisting of part 600, is added to read as follows:

Subchapter I—Basic Health Program

PART 600—ADMINISTRATION, ELIGIBILITY, ESSENTIAL HEALTH BENEFITS, PERFORMANCE STANDARDS, SERVICE DELIVERY REQUIREMENTS, PREMIUM AND COST SHARING, ALLOTMENTS, AND RECONCILIATION

Subpart A—General Provisions and Definitions

- Sec.
600.1 Scope.
600.5 Definitions and use of terms.

Subpart B—Establishment and Certification of State Basic Health Programs

- 600.100 Program description.
600.105 Basis, scope, and applicability of subpart B.
600.110 BHP Blueprint.
600.115 Development and submission of the BHP Blueprint.
600.120 Certification of a BHP Blueprint.
600.125 Revisions to a certified BHP Blueprint.
600.130 Withdrawal of a BHP Blueprint prior to implementation.
600.135 Notice and timing of HHS action on a BHP Blueprint.
600.140 State termination of a BHP.
600.142 HHS withdrawal of certification and termination of a BHP.
600.145 State program administration and operation.
600.150 Enrollment assistance and information requirements.
600.155 Tribal consultation.
600.160 Protections for American Indian and Alaskan Natives.
600.165 Nondiscrimination standards.
600.170 Annual report content and timing.

Subpart C—Federal Program Administration

- 600.200 Federal program reviews and audits.

Subpart D—Eligibility and Enrollment

- 600.300 Basis, scope, and applicability.
600.305 Eligible individuals.
600.310 Application.
600.315 Certified application counselors.
600.320 Determination of eligibility for and enrollment in a standard health plan.
600.330 Coordination with other insurance affordability programs.
600.335 Appeals.
600.340 Periodic determination and renewal of BHP eligibility.
600.345 Eligibility verification.
600.350 Privacy and security of information.

Subpart E—Standard Health Plan

- 600.400 Basis, scope, and applicability.
600.405 Standard health plan coverage.
600.410 Competitive contracting process.
600.415 Contracting qualifications and requirements.
600.420 Enhanced availability of standard health plans.
600.425 Coordination with other insurance affordability programs.

Subpart F—Enrollee Financial Responsibilities

- 600.500 Basis, scope, and applicability.
600.505 Premiums.
600.510 Cost-sharing.
600.515 Public schedule of enrollee premium and cost sharing.
600.520 General cost-sharing protections.
600.525 Disenrollment procedures and consequences for nonpayment of premiums.

Subpart G—Payment to States

- 600.600 Basis, scope, and applicability.
600.605 BHP payment methodology.
600.610 Secretarial determination of BHP payment amount.
600.615 Deposit of Federal BHP payment.

Subpart H—BHP Trust Fund

- 600.700 Basis, scope, and applicability.
600.705 BHP trust fund.
600.710 Fiscal policies and accountability.
600.715 Corrective action, restitution, and disallowance of questioned BHP transactions

Authority: Section 1331 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, 124 Stat. 1029).

Subpart A—General Provisions and Definitions

§ 600.1 Scope.

Section 1331 of the Patient Protection and Affordable Care Act, provides for the establishment of the Basic Health Program (BHP) under which a State may enter into contracts to offer two or more standard health plans providing at least

essential health benefits to eligible individuals in lieu of offering such individuals the opportunity to enroll in coverage through an Affordable Insurance Exchange. States that elect to operate a BHP will receive federal funding based on the amount of premium tax credits and cost-sharing reductions that would have been available if enrollees had obtained coverage through the Exchange.

§ 600.5 Definitions and use of terms.

For purposes of this part, the following definitions apply:

Advance payments of the premium tax credit means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with sections 1402 and 1412 of the Affordable Care Act.

Affordable Care Act is the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152).

Basic Health Program (BHP) Blueprint is the operational plan that a State must submit to the Secretary of Health and Human Services (HHS) for certification to operate a BHP.

Certification means authority to operate the program which is required for program operations but it does not create an obligation on the part of the State to implement a BHP.

Code means the Internal Revenue Code of 1986.

Cost sharing means any expenditure required by or on behalf of an enrollee with respect to covered health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers and spending for non-covered services.

Enrollee means an eligible individual who is enrolled in a standard health plan contracted to operate as part of a BHP.

Essential health benefits means the benefits described under section 1302(b) of the Affordable Care Act.

Family and family size is as defined at 26 CFR 1.36B-1(d).

Federal fiscal year means the time period beginning October 1st and ending September 30th.

Federal poverty level or FPL means the most recently published Federal poverty level, updated periodically in the **Federal Register** by the secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2).

Household income is as defined in 26 CFR 1.36B-1(e)(1).

Indian means any individual as defined in section 4 (d) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

Lawfully present has the meaning given in 45 CFR 152.2

Minimum essential coverage has the meaning set forth at 26 CFR 1.5000A-2, including coverage recognized by the Secretary as minimum essential coverage pursuant to 26 CFR 1.5000A-2(f). Under that authority, the Secretary recognizes coverage through a BHP standard health plan as minimum essential coverage.

Modified adjusted gross income is as defined in 26 CFR 1-36B-1(e)(2).

Premium means any enrollment fee, premium, or other similar charge paid to the standard health plan offeror.

Preventive health services and items includes those services and items specified in 45 CFR 147.130(a).

Program year means a calendar year for which a standard health plan provides coverage for eligible BHP enrollees.

Qualified health plan or QHP means a health plan that has in effect a certification that it meets the standards described in subpart C of 45 CFR part 156 issued or recognized by each Exchange through which such plan is offered in accordance with the process described in subpart K of 45 CFR, except that such term must not include a qualified health plan which is a catastrophic plan described in 45 CFR 155.20

Reference plan is a synonym for the EHB benchmark plan and is defined at 45 CFR 156.100.

Regional compact means an agreement between two or more States to jointly procure and enter into contracts with standard health plan offeror(s) for the administration and provision of a standard health plan under the BHP to eligible individuals in such States.

Residency is determined in accordance with 45 CFR 155.305(a)(3).

Single streamlined application has the same meaning as application defined at 42 CFR 431.907(b)(1) of this chapter and 45 CFR 155.405(a) and (b)

Standard health plan means a health benefits package, or product, that is provided by the standard health plan offeror.

Standard health plan offeror means an entity that is eligible to enter into contracts with the State for the administration and provision of a standard health plan under the BHP.

State means each of the 50 states and the District of Columbia as defined by section 1304 of the Act.

Subpart B—Establishment and Certification of State Basic Health Programs

§ 600.100 Program description.

A State Basic Health Program (BHP) is operated consistent with a BHP Blueprint that has been certified by the Secretary to meet the requirements of this part. The BHP Blueprint is developed by the State for certification by the Secretary in accordance with the processes described in this subpart.

§ 600.105 Basis, scope, and applicability of subpart B.

(a) *Statutory basis.* This subpart implements the following sections of the Act:

(1) Section 1331(a)(1) which defines a Basic Health Program.

(2) Section 1331(a)(2) which requires the Secretary to certify a Basic Health Program before it may become operational.

(3) Section 1331(f) which requires Secretarial oversight through annual reviews.

(b) *Scope and applicability.* (1) This subpart sets forth provisions governing the administration of the BHP, the general requirements for development of a BHP Blueprint required for certification, for program operations and for voluntary program termination.

(2) This subpart applies to all States that submit a BHP Blueprint and request certification to operate a BHP.

§ 600.110 BHP Blueprint.

The BHP Blueprint is a comprehensive written document submitted by the State to the Secretary for certification of a BHP in the form and manner specified by HHS. The program must be administered in accordance with all aspects of section 1331 of the Affordable Care Act and other applicable law, this chapter, and the certified BHP Blueprint.

(a) *Content of a Blueprint.* The Blueprint will establish compliance with applicable requirements by including a description, or if applicable, an assurance of the following:

(1) The minimum benefits offered under a standard health plan that assures inclusion of essential health benefits as described in section 1302(b) of the Affordable Care Act, in accordance with § 600.405.

(2) The competitive process, consistent with § 600.410, that the State will undertake to contract for the provision of standard health plans.

(3) The standard contract requirements, consistent with § 600.415, that the State will incorporate in its standard health plan contracts.

(4) The methods by which the State will enhance the availability of standard health plan coverage as described in § 600.420.

(5) The methods by which the State will ensure and promote coordination with other insurance affordability programs as described in § 600.425.

(6) The premium imposed under the BHP, consistent with the standards set forth in § 600.505.

(7) The cost sharing imposed under the BHP, consistent with the standards described in § 600.510.

(8) The disenrollment procedures and consequences for nonpayment of premiums consistent with § 600.525, respectively.

(9) The standards, consistent with § 600.305 used to determine eligibility for the program.

(10) The State's policies regarding enrollment, disenrollment and verification consistent with §§ 600.320 and 600.345, along with a plan to ensure coordination with and eliminate gaps in coverage for individuals transitioning to other insurance affordability programs.

(11) The fiscal policies and accountability procedures, consistent with § 600.710.

(12) The process by which BHP trust fund trustees shall be appointed, the qualifications and responsibilities of such trustees, and any arrangements to insure or indemnify such trustees against claims for breaches of their fiduciary responsibilities.

(13) A description of how the State will ensure program integrity, including how it will address potential fraud, waste, and abuse and ensure consumer protections.

(14) An operational assessment establishing operating agency readiness.

(b) *Funding plan.* (1) The BHP Blueprint must be accompanied by a funding plan that describes the enrollment and cost projections for the first 12 months of operation and the funding sources, if any, beyond the BHP trust fund.

(2) The funding plan must demonstrate that Federal funds will only be used to reduce premiums and cost-sharing or to provide additional benefits.

(c) *Transparency.* HHS shall make a State's BHP Blueprint available on line.

§ 600.115 Development and submission of the BHP Blueprint.

(a) *State authority to submit the State Blueprint.* A State BHP Blueprint must be signed by the State's Governor or by

the official with delegated authority from the Governor to sign it.

(b) *State Basic Health Program officials.* The State must identify in the BHP Blueprint the agency and officials within that agency, by position or title, who are responsible for program administration, operations, and financial oversight.

(c) *Opportunity for public comment.* The State must provide an opportunity for public comment on the BHP Blueprint content described in § 600.110 before submission to the Secretary for certification.

(1) The State must seek public comment on any significant subsequent revisions prior to submission of those revisions to the Secretary for certification. Significant revisions are those that alter core program operations required by § 600.145(e).

(2) The process of seeking public comment must include Federally-recognized tribes as defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, located in the State.

(d) *Submission and timing.* The BHP Blueprint must be submitted in a manner and format specified by HHS. States may not implement the BHP prior to receiving certification. The date of implementation for this purpose is the first day enrollees would receive coverage under the BHP.

§ 600.120 Certification of a BHP Blueprint.

(a) *Effective date of certification.* The effective date of the certification is the date of signature by the Secretary.

(b) *Payments for periods prior to certification.* No payment may be made under this part for periods of BHP operation prior to the date of certification.

(c) *Period in which a certified Blueprint remains in effect.* The certified Blueprint remains in effect until:

(1) The Blueprint is replaced by Secretarial certification of an updated Blueprint containing revisions submitted by the State.

(2) The State terminates the program consistent with § 600.140.

(3) The Secretary makes a finding that the BHP Blueprint no longer meets the standards for certification based on findings in the annual review, or reports significant evidence of beneficiary harm, financial malfeasance, fraud, waste or abuse by the BHP agency or the State consistent with § 600.142.

(d) *Blueprint approval standards for certification.* The Secretary will certify a BHP Blueprint provided it meets all of the following standards:

(1) The Blueprint contains sufficient information for the Secretary to

determine that the BHP will comply with the requirements of section 1331 of the Affordable Care Act and this Part.

(2) The BHP Blueprint demonstrates adequate planning for the integration of BHP with other insurance affordability programs in a manner that will permit a seamless, coordinated experience for a potentially eligible individual.

(3) The Blueprint is a complete and comprehensive description of the BHP and its operations, demonstrating thorough planning and a concrete program design, without contingencies or reserved decisions on operational features.

§ 600.125 Revisions to a certified BHP Blueprint.

(a) *Submission of revisions.* In the event that a State seeks to make significant change(s) that alter program operations described in the certified BHP Blueprint, the State must submit a revised Blueprint to the Secretary for review and certification.

(b) *Continued operation.* The State is responsible for continuing to operate under the terms of the existing certified Blueprint until and unless a revised Blueprint is certified.

§ 600.130 Withdrawal of a BHP Blueprint prior to implementation.

To the extent that a State has not enrolled eligible individuals into the BHP:

(a) The State may submit a written request to stop any further consideration of a previously submitted BHP Blueprint, whether certified or not.

(b) The written request must be signed by the governor, or the State official delegated to sign the BHP Blueprint by the governor.

(c) HHS will respond with a written confirmation that the State has withdrawn the Blueprint.

§ 600.135 Notice and timing of HHS action on a BHP Blueprint.

(a) *Timely response.* HHS will act on all certification and revision requests in a timely manner.

(b) *Issues preventing certification.* HHS will notify the State in writing of any impediments to certification that arise in reviewing a proposed BHP Blueprint.

§ 600.140 State termination of a BHP.

(a) If a State decides to terminate its BHP, the State must complete all of the following prior to the effective date of the termination or the indicated dates:

(1) Submit written notice to the Secretary no later than 120 days prior to the proposed termination date accompanied by a proposed transition plan that describes procedures to assist

consumers with transitioning to other insurance affordability programs.

(2) Resolve concerns expressed by the Secretary and obtain approval by the Secretary of the transition plan.

(3) Submit written notice to all participating standard health plan offerors, and enrollees that it intends to terminate the program at least 90 days prior to the termination date. The notices to enrollees must include information regarding the State's assessment of their eligibility for all other insurance affordability programs in the State. Notices must meet the accessibility and readability standards at 45 CFR 155.230(b).

(4) Transmit all information provided as part of an application, and any information obtained or verified by the State or other agencies administering insurance affordability programs via secure electronic interface, promptly and without undue delay to the agency administering the Exchange and the Medicaid agency as appropriate.

(5) Fulfill its contractual obligations to participating standard health plan offerors including the payment of all negotiated rates for participants, as well as plan oversight ensuring that participating standard health plan offerors fulfill their obligation to cover benefits for each enrollee.

(6) Fulfill data reporting requirements to HHS.

(7) Complete the annual financial reconciliation process with HHS to ensure full compliance with Federal financial obligations.

(8) Refund any remaining balance in the BHP trust fund.

(b) [Reserved]

§ 600.142 HHS withdrawal of certification and termination of a BHP.

(a) The Secretary may withdraw certification for a BHP Blueprint based on a finding that the BHP Blueprint no longer meets the standards for certification based on findings in the annual review, findings from a program review conducted in accordance with § 600.200 or from significant evidence of beneficiary harm, financial malfeasance, fraud, waste or abuse.

(b) Withdrawal of certification for a BHP Blueprint shall occur only after the Secretary provides the State with notice of the proposed finding that the standards for certification are not met or evidence of harm or misconduct in program operations, a reasonable period for the State to address the finding (either by substantiating compliance with the standards for certification or submitting revisions to the Blueprint, or securing HHS approval of a corrective

action plan), and an opportunity for a hearing before issuing a final finding.

(c) The Secretary shall make every reasonable effort to resolve proposed findings without requiring withdrawal of BHP certification.

(d) The effective date of an HHS determination withdrawing BHP certification shall not be earlier than 120 days following a final finding of noncompliance with the standards for certification.

(e) Within 30 days following a final finding of noncompliance with the standards for certification, the State shall submit a transition plan that describes procedures to assist consumers with transitioning to other insurance affordability programs, and shall comply with the procedures described in § 600.140(a)(2) through (8).

§ 600.145 State program administration and operation.

(a) *Program operation.* The State must implement its BHP in accordance with the approved and certified State BHP Blueprint, any approved modifications to the State BHP Blueprint and the requirements of this chapter and applicable law.

(b) *Eligibility.* All persons have a right to apply for a determination of eligibility and, if eligible, to be enrolled into coverage that conforms to these regulations.

(c) *Statewide program operation.* A state choosing to operate a BHP must operate it statewide.

(d) *No caps on program enrollment.* A State implementing a BHP must not be permitted to limit enrollment by setting an income level below the income standard prescribed in section 1331 of the Affordable Care Act, having a fixed enrollment cap or imposing waiting lists.

(e) *Core operations.* A State operating a BHP must perform all of the following core operating functions:

(1) Eligibility determinations as specified in § 600.320.

(2) Eligibility appeals as specified in § 600.335.

(3) Contracting with standard health plan offerors as specified in § 600.410.

(4) Oversight and financial integrity including, but not limited to, operation of the Trust Fund specified at §§ 600.705 and 600.710, compliance with annual reporting at § 600.170, and providing data required by § 600.610 for Federal funding and reconciliation processes.

(5) Consumer assistance as required in § 600.150.

(6) Extending protections to American Indian/Alaska Natives specified at § 600.160, as well as comply with the

Civil Rights and nondiscrimination provisions specified at § 600.165.

(7) Data collection and reporting as necessary for efficient and effective operation of the program and as specified by HHS to support program oversight.

(8) If necessary, program termination procedures at § 600.145.

§ 600.150 Enrollment assistance and information requirements.

(a) *Information disclosure.* (1) The State must make accurate, easily understood information available to potential applicants and enrollees about the BHP coverage option along with information about other insurance affordability programs.

(2) The State must provide accessible information on coverage, including additional benefits that may be provided outside of the standard health plan coverage, any tiers of coverage it has built into the BHP, including who is eligible for each tier.

(3) The State must require participating standard health plans to provide clear information on premiums; covered services including any limits on amount, duration and scope of those services; applicable cost-sharing using a standard format supplied by the State, and other data specified in, and in accordance with, 45 CFR 156.220.

(4) The State must provide information in a manner consistent with 45 CFR 155.205(c).

(5) The State must require participating standard health plans to make publicly available, and keep up to date, the names and locations of currently participating providers.

(b) [Reserved]

§ 600.155 Tribal consultation.

The State must consult with Indian tribes located in the State on the development and execution of the BHP Blueprint using the State or Federal tribal consultation policy approved by the applicable State or Federal Exchange.

§ 600.160 Protections for American Indian and Alaskan Natives.

(a) *Enrollment.* Indians must be extended the same special enrollment status in BHP standard health plans as applicable to enrollment in a QHP through the Exchange under 45 CFR 155.420(d)(8). Indians will be allowed to enroll in, or change enrollment in, standard health plans one time per month.

(b) *Premiums.* The State must permit Indian tribes, tribal organizations and urban Indian organizations to pay standard health plan premiums on

behalf of BHP eligible and enrolled individuals.

(c) *Cost sharing.* No cost sharing may be imposed on Indians under the standard health plan.

(d) *Requirement.* Standard health plans must pay primary to health programs operated by the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations for services that are covered by a standard health plan.

§ 600.165 Nondiscrimination standards.

(a) The State and standard health plans, must comply with all applicable civil rights statutes and requirements, including Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 1557 of the Affordable Care Act, and 45 CFR part 80, part 84, and part 91 and 28 CFR part 35.

(b) The State must comply with the nondiscrimination provision at 45 CFR 155.120(c)(2).

§ 600.170 Annual report content and timing.

(a) *Content.* The State must submit an annual report that includes any evidence of fraud, waste, or abuse on the part of participating providers, plans, or the State BHP agency known to the State, and a detailed data-driven review of compliance with the following:

(1) Eligibility verification requirements for program participation as specified in § 600.345.

(2) Limitations on the use of Federal funds received by the BHP as specified in § 600.705.

(3) Requirements to collect quality and performance measures from all participating standard health plans focusing on quality of care and improved health outcomes as specified in sections 1311(c)(3) and (4) of the Affordable Care Act and as further described in § 600.415.

(4) Requirements specified by the Secretary at least 120 days prior to the date of the annual report as requiring further study to assess continued State compliance with Federal law, regulations and the terms of the State's certified Blueprint, based on a Federal review of the BHP pursuant to § 600.200, and/or a list of any outstanding recommendations from any audit or evaluation conducted by the HHS Office of Inspector General that have not been fully implemented, including a statement describing the status of implementation and why implementation is not complete,

(b) *Timing.* The annual reports, in the format specified by the Secretary, are due 60 days before the end of each operational year.

Subpart C—Federal Program Administration

§ 600.200 Federal program reviews and audits.

(a) *Federal compliance review of the State BHP.* To determine whether the State is complying with the Federal requirements and the provision of its BHP Blueprint, HHS may review, as needed, but no less frequently than annually, the compliance of the State BHP with applicable laws, regulations and interpretive guidance. This review may be based on the State's annual report submitted under § 600.170, or may be based on direct Federal review of State administration of the BHP Blueprint through analysis of the State's policies and procedures, reviews of agency operation, examination of samples of individual case records, and additional reports and/or data as determined by the Secretary.

(b) *Action on compliance review findings.* The compliance review will identify the following action items:

(1) Requirements that need further study or data to assess continued State compliance with Federal law, regulations and the terms of the State's certified Blueprint. Such findings must be addressed in the next State annual report due no more than 120 days after the date of the issuance of the Federal compliance review.

(2) Requirements with which the State BHP does not appear to be in compliance that could be the basis for withdrawal of BHP certification. Such findings must be resolved by the State (either by substantiating compliance with the standards for certification or submitting revisions to the Blueprint) If not resolved, such action items can be the basis for a proposed finding for withdrawal of BHP certification.

(3) Requirements with which the State BHP does not appear to be in compliance that are not a basis for withdrawal of BHP certification but require revision to the Blueprint must be resolved by the State. If not resolved, such action items can be the basis for denial of other Blueprint revisions.

(4) *Improper use of BHP trust fund resources.* The State and the BHP trustees shall be given an opportunity to review and resolve concerns regarding improper use of BHP trust funds as indicated in § 600.715(a) through (c): either by substantiating the proper use of trust fund resources or by taking corrective action which include changes

to procedures to ensure proper use of trust fund resources, and restitution of improperly used resources to the trust fund.

(c) The HHS Office of Inspector General (OIG) may periodically audit State operations and standard health plan practices as described in § 430.33(a) of this chapter. The State and the BHP trustees shall be given an opportunity to review and resolve concerns about improper use of BHP trust funds as indicated in § 600.715(a) through (c): either by substantiating the proper use of trust fund, or by taking corrective action that includes changes to procedures to ensure proper use of trust fund resources, and restitution of improperly used resources to the trust fund. Final reports on those audits shall be transmitted to both the State and the Secretary for actions on findings.

Subpart D—Eligibility and Enrollment

§ 600.300 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart interprets and implements section 1331(e) of the Affordable Care Act which sets forth eligibility standards for the BHP and prohibits eligible individuals from being treated as qualified individuals and enrolling in qualified health plans offered through the Exchange.

(b) *Scope and applicability.* This subpart sets forth the requirements for all BHPs established under section 1331 of the Affordable Care Act regarding eligibility standards and application screening and enrollment procedures.

§ 600.305 Eligible individuals.

(a) *Eligibility standards* The State must determine individuals eligible to enroll in a standard health plan if they:

(1) Are residents of the State not eligible for the State's Medicaid program consisting of at least the essential health benefits codified in § 600.405.

(2) Have household income which exceeds 133 percent but does not exceed 200 percent of the FPL for the applicable family size, or, in the case of an individual who is a lawfully present non-citizen, ineligible for Medicaid due to such non-citizen status, whose household income does not exceed 200 percent of the FPL for the applicable family size.

(3) Are not eligible to enroll in affordable minimum essential coverage. If an individual meets all other eligibility standards, and—

(i) Is eligible for, or enrolled in, Medicaid or CHIP that does not meet the minimum essential coverage definition, the individual is eligible to enroll in a standard health plan without regard to

eligibility or enrollment in such other programs; or

(ii) Is eligible for Employer Sponsored Insurance (ESI) that is unaffordable (as determined under section 5000A of the Internal Revenue Code), the individual is eligible to enroll in a standard health plan.

(4) Are 64 years of age or younger.

(5) Are either a citizen or lawfully present non-citizen.

(6) Are not incarcerated, other than during a period pending disposition of charges.

(b) *Eligibility restrictions.* The State may not impose conditions of eligibility other than those identified in this section, including, but not limited to, restrictions on eligibility based on geographic location or imposition of an enrollment cap or waiting period for individuals previously eligible for or enrolled in other coverage.

§ 600.310 Application.

(a) *Single streamlined application.* The State must use the single streamlined application used by the State in accordance with § 435.907(b) of this chapter and 45 CFR 155.405(a) and (b).

(b) *Opportunity to apply and assistance with application.* The terms of §§ 435.906 and 435.908 of this chapter, requiring the State to provide individuals the opportunity to apply and receive assistance with an application in the Medicaid program, apply in the same manner to States in the administration of the BHP.

(c) *Authorized representatives.* The State may choose to permit the use of an authorized representative designated by an applicant or beneficiary to assist with the individual's application, eligibility renewal and other ongoing communication with the BHP. If the State chooses this option, the State must follow the standards set forth at either 45 CFR 155.227 or 42 CFR 435.923.

§ 600.315 Certified application counselors.

The State may have a program to certify application counselors to assist individuals to apply for enrollment in the BHP and other insurance affordability programs. If the State chooses this option, the State must follow the procedures and standards for such a program set forth in the regulations at either 45 CFR 155.225 or 42 CFR 435.908.

§ 600.320 Determination of eligibility for and enrollment in a standard health plan.

(a) Determining eligibility to enroll in a standard health plan may be performed by a State or local governmental entity, including a

governmental entity that determines eligibility for Medicaid or CHIP, and may be delegated by the state to an Exchange that is a government agency.

(b) *Timely determinations.* The terms of 42 CFR 435.912 (relating to timely determinations of eligibility under the Medicaid program) apply to eligibility determinations for enrollment in a standard health plan exclusive of § 435.912(c)(3)(i). The standards established by the State must be included in the BHP Blueprint.

(c) *Effective date of eligibility.* The State must establish a uniform method of determining the effective date of eligibility for enrollment in a standard health plan following either the Exchange standards at 45 CFR 155.420(b)(1) or the Medicaid process at 42 CFR 435.915.

(d) *Enrollment periods.* The State must offer enrollment and special enrollment periods equivalent to the Exchange at 45 CFR 155.410 and 155.420 or the State may follow the continuous eligibility standard of Medicaid.

§ 600.330 Coordination with other insurance affordability programs.

(a) *Coordination.* The State must establish eligibility and enrollment mechanisms and procedures to maximize coordination with the Exchange, Medicaid and CHIP. The terms of 45 CFR 155.345(a) regarding the agreements between insurance affordability programs apply to a BHP. The State BHP agency must fulfill the requirements of 42 CFR 435.1200(d) and (e) and, if applicable, paragraph (c) for BHP eligible individuals.

(b) *Coordinated determinations of eligibility.* The agency administering BHP must establish and maintain processes to make income eligibility determinations using modified adjusted gross income (MAGI), and to ensure that applications received by the agency, to the extent warranted and permitted under delegations from other agencies administering insurance affordability programs, also result in eligibility assessments or determinations for those other programs. The BHP must also accept applications transferred from other agencies administering insurance affordability programs, and ensure that individuals assessed or determined eligible for BHP by such other agencies are afforded the opportunity to enroll in a standard health plan without undue delay. Individuals submitting applications to any of the aforementioned agencies must not be required to duplicate the submission of information.

(c) *Account transfers.* The agency administering the BHP must participate in the secure exchange of information with agencies administering other insurance affordability programs, using the standards set forth under 45 CFR 155.345(h) regarding electronic account transfers.

(d) *Notification to referring agency.* The terms in § 435.1200(d)(5) regarding the notification to other programs of the final determination of eligibility apply equally to States administering a BHP.

(e) *Notice of decision concerning eligibility.* Every application for BHP shall result in a determination of eligibility or ineligibility, unless the application has been withdrawn, the applicant has died, or the applicant cannot be located. Notices of eligibility determinations shall be coordinated with other insurance affordability programs and Medicaid. Electronic notices shall be provided to the extent consistent with § 435.918(b).

§ 600.335 Appeals.

(a) *Notice of eligibility appeal rights.* Eligibility determinations must include a notice of the right to appeal the determination, and instructions regarding how to file an appeal.

(b) *Appeals process.* Individuals must be given the opportunity to appeal BHP eligibility determinations through the appeals process of the state's Medicaid program, as set forth in an agreement with the Medicaid agency, however, this process may not confer a second level appeal or an appeal to the federal Department of Health and Human Services.

(c) *Accessibility.* The appeals process must be conducted in a manner accessible to individuals with limited English proficiency and persons with disabilities.

§ 600.340 Periodic redetermination and renewal of BHP eligibility.

(a) *Period of eligibility.* An individual is determined eligible for a period of 12 months unless the eligibility is redetermined based on new information received and verified from enrollee reports or data sources. The State must require enrollees to report changes in circumstances, at least to the extent that they would be required to report such changes if enrolled in coverage through the Exchange, consistent with 45 CFR 155.330(b).

(b) *Renewal of coverage.* If an enrollee remains eligible for coverage in the BHP, the enrollee will be afforded notice of a reasonable opportunity to change plans to the extent the BHP offers a choice of plans, and shall remain in the plan selected for the

previous year unless such enrollee terminates coverage from the plan by selecting a new plan or withdrawing from a plan.

(c) *Procedures.* The State shall choose to apply equally all the redetermination procedures described in either 45 CFR 155.335 or 42 CFR 435.916(a) in administering a BHP.

(d) *Verification.* The State must verify information needed to redetermine and renew eligibility in accordance with § 600.345 and comply with the requirements set forth in § 600.330 relating to screening individuals for other insurance affordability programs and transmitting such individuals' electronic accounts and other relevant information to the other program, as appropriate.

(e) *Notice to enrollee.* The State must provide an enrollee with an annual notice of redetermination of eligibility. The annual notice should include all current information used for the most recent eligibility determination. The enrollee is required to report any changes with respect to information listed within the notice within 30 days of the date of the notice. The State must verify information in accordance with § 600.345.

§ 600.345 Eligibility verification.

(a) The State must verify the eligibility of an applicant or beneficiary for BHP consistent either with the standards and procedures set forth in—

- (1) Medicaid regulations at §§ 435.945 through 435.956 of this chapter; or
- (2) Exchange regulations at 45 CFR 155.315 and 155.320.

(b) [Reserved]

§ 600.350 Privacy and security of information.

The State must comply with the standards and procedures set forth in 45 CFR 155.260(b) and (c) as are applicable to the operation of the BHP.

Subpart E—Standard Health Plan

§ 600.400 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart implements sections 1331(b), (c), and (g) of the Affordable Care Act, which set forth provisions regarding the minimum coverage standards under BHP, as well as the delivery of such coverage, including the contracting process for standard health plan offerors participating in the BHP.

(b) *Scope and applicability.* This subpart consists of provisions relating to all BHPs for the delivery of, at a minimum, the ten essential health benefits as described in section 1302(b) of the Affordable Care Act, the contracting process by which States

must contract for the provision of standard health plans, the minimum requirements States must include in their standard health plan contracts, the minimum coverage standards provided by the standard health plan offeror, and other applicable requirements to enhance the coordination of the provision of standard health plan coverage.

§ 600.405 Standard health plan coverage.

(a) *Essential Health Benefits (EHBs).* Standard health plan coverage must include, at a minimum, the essential health benefits as determined and specified under 45 CFR 156.110, and 45 CFR 156.122 regarding prescription drugs, except that States may select more than one base benchmark option from those codified at 45 CFR 156.100 for establishing essential health benefits for standard health plans. Additionally, States must comply with 45 CFR 156.122(a)(2) by requiring participating plans to submit their drug list to the State.

(b) *Additional required benefits.* Where the standard health plan for BHP is subject to State insurance mandates, the State shall adopt the determination of the Exchange at 45 CFR 155.170(a)(3) in determining which benefits enacted after December 31, 2011 are in addition to the EHBs.

(c) *Periodic review.* Essential health benefits must include any changes resulting from periodic reviews required by section 1302(b)(4)(G) of the Affordable Care Act. The provision of such essential health benefits must meet all the requirements of 45 CFR 156.115.

(d) *Non-discrimination in benefit design.* The terms of 45 CFR 156.125 apply to standard health plans offered under the BHP.

(e) *Compliance.* The State must comply with prohibitions on federal funding for abortion services equivalent to the Exchange at 45 CFR 156.280.

§ 600.410 Competitive contracting process.

(a) *General requirement.* In order to receive initial HHS certification as described in § 600.120, the State must assure in its BHP Blueprint that it complies with the requirements set forth in this section.

(b) *Contracting process.* The State must:

- (1) Conduct the contracting process in a manner providing full and open competition consistent with the standards of 45 CFR 92.36(b) through (i);
- (2) Include a negotiation of the elements described in paragraph (d) of this section on a fair and adequate basis; and

(3) Consider the additional elements described in paragraph (e) of this section.

(c) *Initial implementation exceptions.*

(1) If a State is not able to implement a competitive contracting process described in paragraph (b) of this section for program year 2015, the State must include a justification as to why it cannot meet the conditions in paragraph (b), as well as a description of the process it will use to enter into contracts for the provision of standard health plans under BHP.

(2) The State must include a proposed timeline that implements a competitive contracting process, as described in paragraph (b) of this section, for program year 2016.

(3) Initial implementation exceptions are subject to HHS approval consistent with the BHP Blueprint review process established in § 600.120, and may only be in effect for benefit year 2015.

(d) *Negotiation criteria.* The State must assure that its competitive contracting process includes the negotiation of:

(1) Premiums and cost sharing, consistent with the requirements at §§ 600.505(e) and 600.510(e);

(2) Benefits, consistent with the requirements at § 600.405;

(3) Inclusion of innovative features, such as:

(i) Care coordination and care management for enrollees, with a particular focus on enrollees with chronic health conditions;

(ii) Incentives for the use of preventive services; and

(iii) Establishment of provider-patient relationships that maximize patient involvement in their health care decision-making, including the use of incentives for appropriate health care utilization and patient choice of provider.

(e) *Other considerations:* The State shall also include in its competitive process criteria to ensure:

(1) Consideration of health care needs of enrollees;

(2) Local availability of, and access to, health care providers;

(3) Use of a managed care process, or a similar process to improve the quality, accessibility, appropriate utilization, and efficiency of services provided to enrollees;

(4) Performance measures and standards focused on quality of care and improved health outcomes as specified in § 600.415;

(5) Coordination between other health insurance affordability programs to ensure enrollee continuity of care as described in § 600.425; and

(6) Measures to prevent, identify, and address fraud, waste and abuse and ensure consumer protections.

(f) *Discrimination.* Nothing in the competitive process shall permit or encourage discrimination in enrollment based on pre-existing conditions or other health status-related factors.

§ 600.415 Contracting qualifications and requirements.

(a) *Eligible offerors for standard health plan contracts.* A State may enter into contracts for the administration and provision of two or more standard health plans under the BHP with a:

- (1) Licensed health maintenance organization.
- (2) Licensed health insurance insurer.
- (3) Network of health care providers demonstrating capacity to meet the criteria set forth in § 600.410(d).
- (4) Non-licensed health maintenance organization participating in Medicaid and/or CHIP.

(b) *General contract requirements.* (1) A State contracting with eligible standard health plan offerors described in paragraph (a) of this section must include contract provisions addressing network adequacy, service provision and authorization, quality and performance, enrollment procedures, disenrollment procedures, noticing and appeals, provisions protecting the privacy and security of personally identifiable information, and other applicable contract requirements as determined by the Secretary to the extent that the service delivery model furthers the objectives of the program.

(2) All contracts under this part must include provisions that define a sound and complete procurement contract, as required by 45 CFR 92.36(i).

(3) To the extent that the standard health plan is health insurance coverage offered by a health insurance issuer, the contract must provide that the medical loss ratio is at least 85 percent.

(c) *Notification of State election.* To receive HHS certification, the State must include in its BHP Blueprint the standard set of contract requirements described in paragraph (b) of this section that will be incorporated into its standard health plan contracts.

§ 600.420 Enhanced availability of standard health plans.

(a) *Choice of standard health plans.* The State must include in its BHP Blueprint an assurance that at least two standard health plans are offered under BHP, and if applicable, a description of how it will further ensure enrollee choice of standard health plans.

(b) *Use of regional compacts.* (1) A State may enter into a joint procurement

with other States to negotiate and contract with standard health plan offerors to administer and provide standard health plans statewide, or in geographically specific areas within the States, to BHP enrollees residing in the participating regional compact States.

(2) A State electing the option described in paragraph (b)(1) of this section must include in its BHP Blueprint all of the following:

(i) The other State(s) entering into the regional compact.

(ii) The specific areas within the participating States that the standard health plans will operate, if applicable.

(A) If the State contracts for the provision of a geographically specific standard health plan, the State must assure that enrollees, regardless of residency within the State, continue to have choice of at least two standard health plans.

(B) [Reserved]

(iii) An assurance that the competitive contracting process used in the joint procurement of the standard health plans complies with the requirements set forth in § 600.410.

(iv) Any variations that may occur as a result of regional differences between the participating states with respect to benefit packages, premiums and cost sharing, contracting requirements and other applicable elements as determined by HHS.

§ 600.425 Coordination with other insurance affordability programs.

A State must describe in its BHP Blueprint how it will ensure coordination for the provision of health care services to promote enrollee continuity of care between Medicaid, CHIP, Exchange and any other state-administered health insurance programs.

Subpart F—Enrollee Financial Responsibilities

§ 600.500 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart implements section 1331(a) of the Affordable Care Act, which sets forth provisions regarding the establishment of the BHP and requirements regarding monthly premiums and cost sharing for enrollees.

(b) *Scope and applicability.* This subpart consists of provisions relating to the imposition of monthly premiums and cost-sharing under all state BHPs.

§ 600.505 Premiums.

(a) *BHP Blueprint requirements.* For premiums imposed on enrollees, the State must include, or if applicable, assure in its BHP Blueprint:

(1) The monthly premium imposed on any enrollee does not exceed the monthly premium that the enrollee would have been required to pay had he or she enrolled in a plan with a premium equal to the premium of the applicable benchmark plan, as defined in 26 CFR 1.36B–3(f). The State must assure that when determining the amount of the enrollee's monthly premium, the State took into account reductions in the premium resulting from premium tax credit that the enrollee would have been paid on the enrollee's behalf.

(2) The group or groups of enrollees subject to premiums.

(3) The collection method and procedure for the payment of an enrollee's premium.

(4) The consequences for an enrollee or applicant who does not pay a premium.

(b) [Reserved]

§ 600.510 Cost-sharing.

(a) *BHP Blueprint requirements.* For cost sharing imposed on enrollees, the State must include, or if applicable, assure in its BHP Blueprint:

(1) The cost sharing imposed on enrollees meet the standards detailed in § 600.520(c).

(2) The group or groups of enrollees subject to the cost sharing.

(3) An assurance that the State has established an effective system to monitor and track the cost-sharing standards consistent with § 600.520(b) and (c) of this part.

(b) *Cost sharing for preventive health services.* A State may not impose cost sharing with respect to the preventive health services or items, as defined in, and in accordance with 45 CFR 147.130.

§ 600.515 Public schedule of enrollee premium and cost sharing.

(a) The State must ensure that applicants and enrollees have access to information about all of the following, either upon request or through an Internet Web site:

(1) The amount of and types of enrollee premiums and cost sharing for each standard health plan that would apply for individuals at different income levels.

(2) The consequences for an applicant or an enrollee who does not pay a premium.

(b) The information described in paragraph (a) of this section must be made available to applicants for standard health plan coverage and enrollees in such coverage, at the time of enrollment and reenrollment, after a redetermination of eligibility, when premiums, cost sharing, and annual

limitations on cost sharing are revised, and upon request by the individual.

§ 600.520 General cost-sharing protections.

(a) *Cost-sharing protections for lower income enrollees.* The State may vary premiums and cost sharing based on household income only in a manner that does not favor enrollees with higher income over enrollees with lower income.

(b) *Cost-sharing protections to ensure enrollment of Indians.* A State must ensure that standard health plans meet the standards in accordance with 45 CFR 156.420(b)(1) and (d).

(c) *Cost-sharing standards.* A State must ensure that standard health plans meet:

(1) The standards in accordance with 45 CFR 156.420(c) and (e); and

(2) The cost-sharing reduction standards in accordance with 45 CFR 156.420(a)(1) for an enrollee with household income at or below 150 percent of the FPL, and 45 CFR 156.420(a)(2) for an enrollee with household income above 150 percent of the FPL.

(3) The State must establish an effective system to monitor compliance with the cost-sharing reduction standards in paragraph (c) of this section, and the cost-sharing protections to ensure enrollment of Indians in paragraph (b) of this section to ensure that enrollees are not held responsible for such monitoring activity.

§ 600.525 Disenrollment procedures and consequences for nonpayment of premiums.

(a) *Disenrollment procedures due to nonpayment of premium.* (1) A State must assure in its BHP Blueprint that it is in compliance with the disenrollment procedures described in 45 CFR 155.430.

(2) A State electing to enroll eligible individuals in accordance with 45 CFR 155.410 and 420 must comply with the premium grace period standards set forth in 45 CFR 156.270 for required premium payment prior to disenrollment.

(3) A State electing to enroll eligible individuals throughout the year must provide an enrollee a 30-day grace period to pay any required premium prior to disenrollment.

(b) *Consequences of nonpayment of premium.* (1) A State electing to enroll eligible individuals in accordance with 45 CFR 155.410 and 420 may not restrict reenrollment to BHP beyond the next open enrollment period.

(2) A State electing to enroll eligible individuals throughout the year must

comply with the reenrollment standards set forth in § 457.570(c). If applicable, the State must define the length of its premium lockout period in its BHP Blueprint.

Subpart G—Payment to States

§ 600.600 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart implements section 1331(d)(1) and (3) of the Affordable Care Act regarding the transfer of Federal funds to a State's BHP trust fund and the Federal payment amount to State for the provision of BHP.

(b) *Scope and applicability.* This subpart consists of provisions relating to the methodology used to calculate the amount of payment to a state in a given Federal fiscal year for the provision of BHP and the process and procedures by which the Secretary establishes a State's BHP payment amount.

§ 600.605 BHP payment methodology.

(a) *General calculation.* The Federal payment for an eligible individual in a given Federal fiscal year is the sum of the premium tax credit component, as described in paragraph (a)(1) of this section, and the cost-sharing reduction component, as described in paragraph (a)(2) of this section.

(1) *Premium tax credit component.* The premium tax credit component equals 95 percent of the premium tax credit for which the eligible individual would have qualified had he or she been enrolled in a qualified health plan through an Exchange in a given calendar year, adjusted by the relevant factors described in paragraph (b) of this section.

(2) *Cost-sharing reduction component.* The cost-sharing reduction component equals 95 percent of the cost of the cost-sharing reductions for which the eligible individual would have qualified had he or she been enrolled in a qualified health plan through an Exchange in a given calendar year adjusted by the relevant factors described in paragraph (b) of this section.

(b) *Relevant factors in the payment methodology.* In determining the premium tax credit and cost-sharing reduction components described in paragraph (a) of this section, the Secretary will consider the following factors to determine applicable adjustments:

- (1) Age of the enrollee;
- (2) Income of the enrollee;
- (3) Self-only or family coverage;
- (4) Geographic differences in average spending for health care across rating areas;
- (5) Health status of the enrollee for purposes of determining risk adjustment

payments and reinsurance payments had the enrollee been enrolled in a qualified health plan through an Exchange;

(6) Reconciliation of the premium tax credit or cost-sharing reductions had such reconciliation occurred if an enrollee had been enrolled in a qualified health plan through an Exchange;

(7) Marketplace experience in other states with respect to Exchange participation and the effect of the premium tax credit and cost-sharing reductions provided to residents, particularly those residents with income below 200 percent of the FPL; and

(8) Other factors affecting the development of the methodology as determined by the Secretary.

(c) *Annual adjustments to payment methodology.* The Secretary will adjust the payment methodology on a prospective basis to adjust for any changes in the calculation of the premium tax credit and cost-sharing reduction components.

§ 600.610 Secretarial determination of BHP payment amount.

(a) *Proposed payment notice.* (1) Beginning in FY 2015 and each subsequent year thereafter, the Secretary will determine and publish in a **Federal Register** notice the next fiscal year's BHP payment methodology. The Secretary will publish this notice annually in October upon receiving certification from the Chief Actuary of CMS.

(2) A State may be required to submit data in accordance with the published proposed payment notice in order for the Secretary to determine the State's payment rate as described in paragraph (b) of this section.

(b) *Final payment notice.* (1) The Secretary will determine and publish the final BHP payment methodology and BHP payment amounts annually in February in a **Federal Register** notice.

(2) *Calculation of payment rates.* State payment rates are determined by the Secretary using the final BHP payment methodology, data requested in the proposed payment notice described in paragraph (a) of this section, and, if needed, other applicable data as determined by the Secretary.

(c) *State specific aggregate BHP payment amounts.* (1) *Prospective aggregate payment amount.* The Secretary will determine, on a quarterly basis, the prospective aggregate BHP payment amount by multiplying the payment rates described in paragraph (b) of this section by the projected number of enrollees. This calculation would be made for each category of enrollees based on enrollee

characteristics and the other relevant factors considered when determining the payment methodology. The prospective aggregate BHP payment amount would be the sum of the payments determined for each category of enrollees for a State.

(2) *Retrospective adjustment to state specific aggregate payment amount for enrollment and errors.* (i) Sixty days after the end of each fiscal year quarter, the Secretary will calculate a retrospective adjustment to the previous quarter's specific aggregate payment amount by multiplying the payment rates described in paragraph (b) of this section by actual enrollment for the respective quarter. This calculation would be made for each category of enrollees based on enrollee characteristics and the other relevant factors considered when determining the payment methodology. The adjusted BHP payment amount would be the sum of the payments determined for each category of enrollees for a State.

(ii) Upon determination that a mathematical error occurred during the application of the BHP funding methodology, the Secretary will recalculate the state's BHP payment amount and make any necessary adjustments in accordance with paragraph (c)(2)(iii) of this section.

(iii) Any difference in the adjusted payment and the prospective aggregate payment amount will result in either:

(A) A deposit of the difference amount into the State's BHP trust fund; or

(B) A reduction in the upcoming quarter's prospective aggregate payment as described in paragraph (c)(1) of this section by the difference amount.

§ 600.615 Deposit of Federal BHP payment.

HHS will make quarterly deposits into the state's BHP trust fund based on the aggregate quarterly payment amounts described in § 600.610(c).

Subpart H—BHP Trust Fund

§ 600.700 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart implements section 1331(d)(2) of the Affordable Care Act, which set forth provisions regarding BHP trust fund expenditures, fiscal policies and accountability standards and restitution to the BHP trust fund for unallowable expenditures.

(b) *Scope and applicability.* This subpart sets forth a framework for BHP trust funds and accounting, establishing sound fiscal policies and accountability standards and procedures for the restitution of unallowable BHP trust fund expenditures.

§ 600.705 BHP trust fund.

(a) *Establishment of BHP trust fund.* (1) The State must establish a BHP trust fund with an independent entity, or as a subset account within its General Fund.

(2) The State must identify trustees responsible for oversight of the BHP trust fund.

(3) Trustees must specify individuals with the power to authorize withdrawal of funds for allowable trust fund expenditures.

(b) *Non-Federal deposits.* The State may deposit non-Federal funds, including such funds from enrollees, providers or other third parties for standard health plan coverage, into its BHP trust fund. Upon deposit, such funds will be considered BHP trust funds, must remain in the BHP trust fund and meet the standards described in paragraphs (c) and (d) of this section.

(c) *Allowable trust fund expenditures.* BHP trust funds may only be used to:

(1) Reduce premiums and cost sharing for eligible individuals enrolled in standard health plans under BHP; or

(2) Provide additional benefits for eligible individuals enrolled in standard health plans as determined by the State.

(d) *Limitations.* BHP trust funds may not be expended for any purpose other than those specified in paragraph (c) of this section. In addition, BHP trust funds may not be used for other purposes including but not limited to:

(1) Determining the amount of non-Federal funds for the purposes of meeting matching or expenditure requirements for Federal funding;

(2) Program administration of BHP or any other program;

(3) Payment to providers not associated with BHP services or requirements; or

(4) Coverage for individuals not eligible for BHP.

(e) *Year-to-year carryover of trust funds.* A State may maintain a surplus, or reserve, of funds in its trust through the carryover of unexpended funds from year-to-year. Expenditures from this surplus must be made in accordance with paragraphs (b) and (c) of this section.

§ 600.710 Fiscal policies and accountability.

A BHP Blueprint must provide that the BHP administering agency will:

(a) *Accounting records.* Maintain an accounting system and supporting fiscal records to assure that the BHP trust funds are maintained and expended in accord with applicable Federal requirements, such as OMB Circulars A-87 and A-133.

(b) *Annual certification.* Obtain an annual certification from the BHP

trustees, the State's chief financial officer, or designee, certifying all of the following:

(1) The State's BHP trust fund financial statements for the fiscal year.

(2) The BHP trust funds are not being used as the non-Federal share for purposes of meeting any matching or expenditure requirement of any Federally-funded program.

(3) The use of BHP trust funds is in accordance with Federal requirements consistent with those specified for the administration and provision of the program.

(c) *Independent audit.* Conduct an independent audit of BHP trust fund expenditures, consistent with the standards set forth in chapter 3 of the Government Accountability Office's Government Auditing Standards, over a 3-year period to determine that the expenditures made during the 3-year period were allowable as described in § 600.705(b) and in accord with other applicable Federal requirements. The independent audit may be conducted as a sub-audit of the single state audit conducted in accordance with OMB Circular A-133, and must follow the cost accounting principles in OMB Circular A-87.

(d) *Annual reports.* Publish annual reports on the use of funds, including a separate line item that tracks the use of funds described in § 600.705(e) to further reduce premiums and cost sharing, or for the provision of additional benefits within 10 days of approval by the trustees. If applicable for the reporting year, the annual report must also contain the findings for the audit conducted in accordance with paragraph (c) of this section.

(e) *Restitution.* Establish and maintain BHP trust fund restitution procedures.

(f) *Record retention.* Retain records for 3 years from date of submission of a final expenditure report.

(g) *Record retention related to audit findings.* If any litigation, claim, financial management review, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

§ 600.715 Corrective action, restitution, and disallowance of questioned BHP transactions.

(a) *Corrective action.* When a question has been raised concerning the authority for BHP trust fund expenditures in an OIG report, other HHS compliance review, State audit or otherwise, the BHP trustees and the State shall review the issues and develop a written

response no later than 60 days upon receipt of such a report, unless otherwise specified in the report, review or audit. To the extent determined necessary in that review, the BHP trustees and State shall implement changes to fiscal procedures to ensure proper use of trust fund resources.

(b) *Restitution*. To the extent that the State and BHP trustees determine that BHP trust funds may not have been properly spent, they must ensure restitution to the BHP trust fund of the funds in question. Restitution may be made directly by the BHP trustees, by the State, or by a liable third party. The State or the BHP trustees may enter into indemnification agreements assigning liability for restitution of funds to the BHP trust fund.

(c) *Timing of restitution*. Restitution to the BHP trust fund for any unallowable expenditure may occur in a lump sum amount, or in equal installment amounts. Restitution to the BHP trust fund cannot exceed a 2-year period from the date of the written response in accordance with paragraph (a) of this section.

(d) *HHS disallowance of improper BHP trust fund expenditures*. The State shall return to HHS the amount of federal BHP funding that HHS has determined was expended for unauthorized purposes, when no provision has been made to restore the funding to the BHP trust fund in accordance with paragraph (b) of this section (unless the restitution does not comply with the timing conditions described in paragraphs (c) of this section). When HHS determines that federal BHP funding is not allowable,

HHS will provide written notice to the state and BHP Trustees containing:

(1) The date or dates of the improper expenditures from the BHP trust fund;

(2) A brief written explanation of the basis for the determination that the expenditures were improper; and

(3) Procedures for administrative reconsideration of the disallowance based on a final determination.

(e) *Administrative reconsideration of BHP trust fund disallowances*. (1) BHP Trustees or the State may request reconsideration of a disallowance within 60 days after receipt of the disallowance notice described in paragraph (d)(1) of this section by submitting a written request for review, along with any relevant evidence, documentation, or explanation, to HHS.

(2) After receipt of a reconsideration request, if the Secretary (or a designated hearing officer) determines that further proceedings would be warranted, the Secretary may issue a request for further information by a specific date, or may schedule a hearing to obtain further evidence or argument.

(3) The Secretary, or designee, shall issue a final decision within 90 days after the later of the date of receipt of the reconsideration request or date of the last scheduled proceeding or submission.

(f) *Return of disallowed BHP funding*. Disallowed federal BHP funding must be returned to HHS within 60 days after the later of the date of the disallowance notice or the final administrative reconsideration upholding the disallowance. Such repayment cannot be made from BHP trust funds, but must be made with other, non-Federal funds.

Title 45

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 2. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92.

■ 3. Section 144.103 is amended by revising the definition of “individual market” to read as follows:

§ 144.103 Definitions.

* * * * *

Individual market means the market for health insurance coverage offered to individuals other than in connection with a group health plan, or other than coverage offered pursuant to a contract between the health insurance issuer with the Medicaid, Children’s Health Insurance Program, or Basic Health programs.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 3, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 10, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013-23292 Filed 9-20-13; 4:15 pm]

BILLING CODE 4120-01-P



FEDERAL REGISTER

Vol. 78

Wednesday,

No. 186

September 25, 2013

Part IV

The President

Proclamation 9022—National Employer Support of the Guard and Reserve Week, 2013

Proclamation 9023—National Historically Black Colleges and Universities Week, 2013

Memorandum of September 20, 2013—Designation of Officers of the Office of the Director of National Intelligence To Act as Director of National Intelligence

Presidential Documents

Title 3—

Proclamation 9022 of September 20, 2013

The President

National Employer Support of the Guard and Reserve Week, 2013

By the President of the United States of America

A Proclamation

Across generations, members of the United States Armed Forces have made America the greatest force for freedom and security the world has ever known. This week, we honor members of the National Guard and Reserve who carry that legacy forward. We thank the employers who support them; and we reaffirm our promise to provide our troops, our veterans, and our military families with the opportunities they have earned.

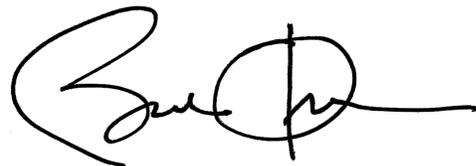
The men and women of the National Guard and Reserve come from every background, race, and creed, and demonstrate an unflinching commitment to our Nation. On the field of battle and here at home, they place themselves in harm's way to protect our freedoms, our lives, and our communities. We are grateful to the employers that provide our Reservists and National Guard members extraordinary support and flexibility. We commend the businesses that help service members advance their civilian careers and ease transitions between military and civilian life.

America must pledge our full support to those who serve in our Armed Forces and their families. That is why First Lady Michelle Obama and Dr. Jill Biden launched the Joining Forces initiative—a program that expands employment opportunities for veterans and military spouses. My Administration has also worked to connect veterans to the workforce through an online Veterans Job Bank and through the Veteran Gold Card program, which provide enhanced services to post-9/11 veterans. I also signed into law tax credits that provide incentives for businesses to hire returning heroes and wounded warriors.

The patriots who serve under our proud flag never lose that sense of service to one another or to country. This week, we pay tribute to these selfless men and women who wear the uniform, to their families, and to their dedicated employers, whose enduring commitment keeps our military strong and our Nation secure.

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 22 through September 28, 2013, as National Employer Support of the Guard and Reserve Week. I call upon all Americans to join me in expressing our heartfelt thanks to the members of the National Guard and Reserve and their civilian employers. I also call on State and local officials, private organizations, and all military commanders, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth 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.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

[FR Doc. 2013-23542
Filed 9-24-13; 11:15 am]
Billing code 3295-F3

Presidential Documents

Proclamation 9023 of September 20, 2013

National Historically Black Colleges and Universities Week, 2013

By the President of the United States of America

A Proclamation

Before the Civil War, an education—much less a college education—was out of reach for most African Americans. There were few institutions focused on meeting the intellectual curiosity and spurring the academic growth of African American students. But as our Union began to heal from the wounds of war, and the 13th, 14th, and 15th Amendments were signed, a freed people demanded a freed mind, and courageous leaders began expanding what we now know as our Nation's Historically Black Colleges and Universities (HBCUs).

More than a century and a half later, we cannot overstate the role HBCUs have played in the narrative of our country. These are the institutions that helped build a middle class and produced some of our Nation's pre-eminent thinkers and entrepreneurs, doctors and scientists, judges and lawyers, service members and educators. These are the schools where students banded together in open fields and assembly halls as part of a movement that pushed us closer to true freedom and equality for all. And these are the campuses where generations of students not only gained the education and skills necessary for the workforce, but also cultivated an understanding of history and knowledge of self that are necessary in life.

As we move toward our goal of having the highest proportion of college graduates in the world by 2020, HBCUs continue to provide pathways of opportunity for students across our country. Ensuring these schools have the resources they need to help students reach their fullest potential remains a top priority for my Administration, and we have taken steps to keep these institutions strong—from providing funding for infrastructure and technology to increasing our investments in Pell Grants.

During National Historically Black Colleges and Universities Week, we pay tribute to the legacies of these proud halls of higher learning. And as we reflect on the past, let us also draw strength from the founders of these institutions and move forward with the work of making sure the doors to a quality education are open to all.

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 22 through September 28, 2013, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth 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.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style.

[FR Doc. 2013-23543
Filed 9-24-13; 11:15 am]
Billing code 3295-F3

Presidential Documents

Memorandum of September 20, 2013

Designation of Officers of the Office of the Director of National Intelligence To Act as Director of National Intelligence

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the “Act”), it is hereby ordered that:

Section 1. Order of Succession. Subject to the provisions of sections 2 and 3 of this memorandum, and to the limitations set forth in the Act, the following officials of the Office of the Director of National Intelligence, in the order listed, shall act as and perform the functions and duties of the Director of National Intelligence (DNI) during any period in which the DNI and the Principal Deputy Director of National Intelligence have died, resigned, or otherwise become unable to perform the functions and duties of the DNI:

- (a) Deputy Director of National Intelligence for Intelligence Integration;
- (b) Director of the National Counterterrorism Center;
- (c) National Counterintelligence Executive; and
- (d) Inspector General of the Intelligence Community.

Sec. 2. National Security Act of 1947. This memorandum shall not supersede the authority of the Principal Deputy Director of National Intelligence to act for, and exercise the powers of, the DNI during the absence or disability of the DNI or during a vacancy in the position of the DNI (National Security Act of 1947, as amended, 50 U.S.C. 3026).

Sec. 3. Exceptions. (a) No individual who is serving in an office listed in section 1(a)–(d) of this memorandum in an acting capacity shall, by virtue of so serving, act as the DNI pursuant to this memorandum.

(b) No individual listed in section 1(a)–(d) of this memorandum shall act as the DNI unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting DNI.

(d) In the event that the Director of the National Counterterrorism Center acts as and performs the functions and duties of the DNI pursuant to section 1 of this memorandum, that individual shall not simultaneously serve as Director of the National Counterterrorism Center during that time, in accordance with 50 U.S.C. 3056.

Sec. 4. Revocation. The Presidential Memorandum of March 8, 2011 (Designation of Officers of the Office of the Director of National Intelligence to Act as Director of National Intelligence), is hereby revoked.

Sec. 5. Judicial Review. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. *Publication.* You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by 'arack' and 'Obama' in a cursive style.

THE WHITE HOUSE,
Washington, September 20, 2013

[FR Doc. 2013-23545
Filed 9-24-13; 11:15 am]
Billing code 3910-A7

Reader Aids

Federal Register

Vol. 78, No. 186

Wednesday, September 25, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-741-6000
Laws	741-6000
Presidential Documents	
Executive orders and proclamations	741-6000
The United States Government Manual	741-6000
Other Services	
Electronic and on-line services (voice)	741-6020
Privacy Act Compilation	741-6064
Public Laws Update Service (numbers, dates, etc.)	741-6043
TTY for the deaf-and-hard-of-hearing	741-6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.fdsys.gov. Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: www.ofr.gov.

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

54147-54372.....	3	58449-58854.....	24
54373-54560.....	4	58855-59160.....	25
54561-54734.....	5		
54735-54958.....	6		
54959-55168.....	9		
55169-55628.....	10		
55629-56126.....	11		
56127-56582.....	12		
56583-56810.....	13		
56811-57032.....	16		
57033-57226.....	17		
57227-57466.....	18		
57467-57782.....	19		
57883-58152.....	20		
58153-58448.....	23		

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.

3 CFR		315.....	54434
Proclamations:		335.....	54434
9005.....	54735	410.....	54434
9006.....	54737	537.....	54434
9007.....	54739	900.....	54434
9008.....	54741	1651.....	57807
9009.....	54743		
9010.....	54745		
9011.....	54747		
9012.....	54749		
9013.....	56123		
9014.....	56125		
9015.....	56809		
9016.....	57461		
9017.....	57463		
9018.....	57465		
9019.....	57779		
9020.....	57781		
9021.....	58865		
9022.....	59155		
9023.....	59157		
Administrative Orders:			
Notices:			
Notice of September			
10, 2013.....	56581		
Notice of September			
18, 2013.....	58151		
Presidential			
Determinations:			
No. 2013-8 of April 11,			
2013.....	55169		
No. 2013-13 of			
September 12,			
2013.....	57225		
No. 2013-14 of			
September 13,			
2013.....	58855		
No. 2013-15 of			
September 16,			
2013.....	58859		
No. 2013-16 of			
September 17,			
2013.....	58861		
Memorandums:			
Memo. of March 8,			
2011 (revoked by			
Memo. of September			
20, 2013).....	59159		
Memorandum of			
September 20,			
2013.....	59159		
5 CFR			
532.....	58153		
1201.....	56811		
1209.....	56811		
1651.....	57783		
1690.....	57783		
7501.....	56127		
Ch. LXXXII.....	55171		
Proposed Rules:			
300.....	54434		
		315.....	54434
		335.....	54434
		410.....	54434
		537.....	54434
		900.....	54434
		1651.....	57807
6 CFR			
Proposed Rules:			
5.....	55657, 58254		
7 CFR			
27.....	54970		
42.....	57033		
205.....	56811		
318.....	56129		
319.....	57467, 58154		
457.....	55171		
955.....	56816		
987.....	54147		
1222.....	56817		
Proposed Rules:			
915.....	57099		
984.....	57101		
1217.....	58956		
1222.....	57006		
8 CFR			
214.....	58867		
9 CFR			
1.....	57227		
2.....	57227		
10 CFR			
170.....	54959		
712.....	56132		
1046.....	55174		
Proposed Rules:			
32.....	56839		
50.....	56174		
51.....	54789, 56621, 56776,		
	57538		
52.....	56174		
431.....	54197, 55782, 55890		
12 CFR			
303.....	55340		
308.....	55340		
324.....	55340		
327.....	55340		
330.....	56583		
333.....	55340		
337.....	55340		
347.....	55340		
349.....	55340		
360.....	54373, 55340		
362.....	55340		
363.....	55340		
364.....	55340		
365.....	55340		
390.....	55340		

391.....55340
 620.....58449
 701.....57250

Proposed Rules:
 43.....57928
 244.....57928
 336.....54401
 344.....54403
 373.....57928
 390.....54401, 54403
 703.....57539
 721.....57539
 1234.....57928

14 CFR
 16.....56135
 23.....55629, 57470
 39.....54149, 54152, 54377,
 54380, 54383, 54385, 54387,
 54561, 54751, 56148, 56150,
 56589, 56592, 56594, 56597,
 56599, 56601, 57047, 57049,
 57053, 57253, 57784, 57786,
 58868, 58872, 58874
 61.....56822
 71.....54561, 57788, 57789,
 58158, 58159
 91.....57790
 95.....57472
 97.....54562, 54564, 56829,
 56830

Proposed Rules:
 1.....54790
 21.....54791
 23.....54790
 25.....54790
 27.....54790
 29.....54790
 39.....54594, 54596, 54792,
 54794, 55660, 55662, 56182,
 56622, 57104, 57542, 58256,
 58487, 58960, 58962, 58965,
 58967, 58970, 58973, 58975,
 58978, 58982
 61.....54790
 71.....54412, 54413, 54415,
 54795, 57545, 58489, 58490
 91.....54790
 121.....54790
 125.....54790
 135.....54790

15 CFR
 748.....54752
 902.....57534

Proposed Rules:
 730.....55664
 740.....55664
 744.....55664
 756.....55664
 758.....55664
 762.....55664

16 CFR
 305.....54566

Proposed Rules:
 300.....57808
 312.....56183, 57319
 1031.....57818
 1240.....58491

17 CFR

Proposed Rules:
 Ch. 1.....56542
 246.....57928

18 CFR
 40.....58449

Proposed Rules:
 40.....58492
 410.....58985

19 CFR
 12.....56832
 101.....54755
 351.....57790

20 CFR
 404.....54756, 57257
 418.....57257
 718.....59102
 725.....59102

21 CFR
 1.....54568
 16.....58786
 73.....54758
 520.....57057
 801.....58786
 803.....58786
 806.....58786
 810.....58786
 814.....58786
 820.....58786
 821.....58786
 822.....58786
 830.....58786

Proposed Rules:
 1.....57320
 16.....57320
 73.....57105
 1140.....55671

23 CFR

Proposed Rules:
 771.....57587

24 CFR
 5.....57058
 202.....57058

Proposed Rules:
 214.....56625
 267.....57928
 Ch. IX.....54416

26 CFR
 1.....54156, 54391, 54568,
 54758, 55202, 57686
 48.....54758
 602.....54156, 57686

Proposed Rules:
 1.....54598, 54796, 54971,
 54986, 56841, 56842, 57547
 301.....54986, 54996

27 CFR

Proposed Rules:
 9.....58050
 479.....55014

28 CFR
 26.....58160

Proposed Rules:
 16.....56852

29 CFR
 1601.....54762
 4022.....56603
 4044.....56603

Proposed Rules:
 1910.....56274

1915.....56274
 1926.....56274

30 CFR
 938.....55210

Proposed Rules:
 7.....58264
 75.....58264
 250.....54417

31 CFR
 34.....54801

Proposed Rules:
 538.....54199
 718.....54199
 560.....54199

33 CFR
 100.....54168, 54569, 54571,
 55214, 57061, 57063, 58875
 117.....55214, 55215, 56605,
 56607, 56609, 56610, 58458
 165.....54171, 54392, 54574,
 54576, 54578, 54581, 54583,
 54585, 54587, 54588, 55216,
 55219, 56151, 56611, 56833,
 56834, 57261, 57480, 57482,
 57485, 57796, 58878, 58880,
 58882

Proposed Rules:
 64.....55230
 140.....55230
 141.....55230
 142.....55230
 143.....55230, 58989
 144.....55230
 145.....55230
 146.....55230
 147.....55230
 151.....58986
 165.....54599, 57567, 57570
 334.....57323

34 CFR
 Subtitle A.....54588
 75.....57066
 Ch. III.....57264, 57266
 371.....57066
 668.....57798

Proposed Rules:
 300.....57324
 Ch. VI.....57571

36 CFR
 220.....56153

38 CFR
 3.....54763, 57486
 17.....57067

Proposed Rules:
 9.....58264
 17.....55671

40 CFR
 9.....55632
 52.....54173, 54177, 54394,
 54396, 54960, 54962, 55221,
 55225, 56164, 56168, 57073,
 57267, 57270, 57273, 57487,
 57496, 57501, 57503, 58154,
 58186, 58459, 58460, 58462,
 58465, 58468, 58884
 60.....54766, 58416
 62.....54766
 81.....54396, 56168, 57270,
 57273, 58189, 58468

180.....55635, 55641, 55644,
 57276, 57280, 57285, 57289,
 58886
 271.....54178, 58890
 272.....58890
 300.....56611, 57799
 721.....55632
 1037.....56171
 1039.....56171
 1042.....56171
 1068.....56171

Proposed Rules:
 49.....58987
 52.....54200, 54602, 54813,
 54816, 54828, 54831, 55029,
 55037, 55234, 56185, 56633,
 56639, 57335, 57573
 60.....54606
 63.....54606
 81.....54831, 58266
 98.....55994
 131.....54518, 58500
 152.....54841
 180.....56185
 271.....54200, 58988
 272.....58988

41 CFR
 60-250.....58614
 60-300.....58614
 60-741.....58682

42 CFR
 6.....58202
 7.....57293
 88.....57505
 411.....57800
 447.....57293

Proposed Rules:
 84.....54432
 405.....54842, 58386
 410.....54842
 412.....54842
 416.....54842
 419.....54842
 475.....54842
 476.....54842
 486.....54842
 491.....58386
 493.....58386
 495.....54842
 600.....59122

44 CFR
 64.....54766, 54770, 57523,
 57526

45 CFR

Proposed Rules:
 144.....59122

46 CFR
 2.....56612
 24.....56612
 30.....56612, 56837
 70.....56612
 90.....56612
 91.....56612
 98.....54775
 150.....56837
 153.....56837
 188.....56612

Proposed Rules:
 110.....58989
 111.....58989

47 CFR	228.....58830	571.....55138	58923, 58938
1.....55648	325.....58470	593.....54182	20.....58124, 58204, 58233
20.....55648	350.....58470	821.....57527	300.....58240
22.....55648	355.....58470	1121.....54589	622.....56171, 57313, 57534,
24.....55648	365.....58470	1150.....54589	58248, 58249
27.....55648	369.....58470	1180.....54589	635.....54195
54.....54967	370.....58470	Proposed Rules:	640.....57534
73.....56170, 58470	372.....58470	26.....57336	648.....54194, 54399
90.....55648	375.....58470	107.....58501	660.....54548
Proposed Rules:	376.....58470	109.....58501	679.....54591, 54592, 55228,
54.....56188	380.....58470	173.....54849	56837, 57097, 57318, 57537,
64.....54201	381.....58470	174.....54849	58955
79.....54612	382.....58470	178.....54849	Proposed Rules:
48 CFR	383.....58470	179.....54849	17.....54214, 54218, 54221,
201.....54968	384.....58470	180.....54849	54613, 54614, 55046, 56192,
206.....54968	385.....56618, 58470	380.....57585	56506, 57604, 58507
49 CFR	386.....58470	383.....57585	25.....58754
App. G to Subch. B.....58470	387.....58470	384.....57585	32.....58754
177.....58915	389.....58470	390.....57822	223.....57611, 57835
190.....58897	390.....58470	396.....54861	224.....57611, 57835
192.....58897	391.....58470	571.....54209	402.....54437
193.....58897	392.....58915	622.....57587	622.....57337, 57339
195.....58897	393.....58470	821.....57602	635.....57340
199.....58897	395.....58470	50 CFR	648.....54442, 57341
	396.....58470	17.....55221, 55600, 55649,	660.....56641, 57348
	397.....58470	56026, 56072, 57076, 57750,	679.....57106
	535.....56171		

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 September 23, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.